

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Eugene Wzorek — PETITIONER  
\_\_\_\_\_  
(Your Name)

VS.

City of Chicago,  
an Illinois Municipal Corporation — RESPONDENT(S)  
[Whose Response is Currently Barred, see Rule 11(e)]

MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS*

The petitioner asks leave to file the attached petition for a writ of certiorari without prepayment of costs and to proceed *in forma pauperis*.

Please check the appropriate boxes:

☒ Petitioner has previously been granted leave to proceed *in forma pauperis* in the following court(s):

Northern District Illinois, Eastern Division;

United States Court of Appeals for the Seventh Circuit

☐ Petitioner has **not** previously been granted leave to proceed *in forma pauperis* in any other court.

☒ Petitioner's affidavit or declaration in support of this motion is attached hereto.

☐ Petitioner's affidavit or declaration is **not** attached because the court below appointed counsel in the current proceeding, and:

☐ The appointment was made under the following provision of law: \_\_\_\_\_  
\_\_\_\_\_, or

☐ a copy of the order of appointment is appended.

Eugene Wzorek  
(Signature)

**AFFIDAVIT OR DECLARATION  
IN SUPPORT OF MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS***

I, Eugene Wzorek, am the petitioner in the above-entitled case. In support of my motion to proceed *in forma pauperis*, I state that because of my poverty I am unable to pay the costs of this case or to give security therefor; and I believe I am entitled to redress.

1. For both you and your spouse estimate the average amount of money received from each of the following sources during the past 12 months. Adjust any amount that was received weekly, biweekly, quarterly, semiannually, or annually to show the monthly rate. Use gross amounts, that is, amounts before any deductions for taxes or otherwise.

| Income source  | Average monthly amount during<br>the past 12 months |               | Amount expected<br>next month |               |
|--|---|---------------|-------------------------------|---------------|
|  | You   | Spouse        | You                           | Spouse        |
| Employment   | \$ <u>none</u>                                      | \$ <u>n/a</u> | \$ <u>none</u>                | \$ <u>n/a</u> |
| Self-employment  | \$ <u>none</u>                                      | \$ <u>n/a</u> | \$ <u>none</u>                | \$ <u>n/a</u> |
| Income from real property<br>(such as rental income)                       | \$ <u>none</u>                                      | \$ <u>n/a</u> | \$ <u>none</u>                | \$ <u>n/a</u> |
| Interest and dividends   | \$ <u>none</u>                                      | \$ <u>n/a</u> | \$ <u>none</u>                | \$ <u>n/a</u> |
| Gifts  | \$ <u>none</u>                                      | \$ <u>n/a</u> | \$ <u>none</u>                | \$ <u>n/a</u> |
| Alimony  | \$ <u>none</u>                                      | \$ <u>n/a</u> | \$ <u>none</u>                | \$ <u>n/a</u> |
| Child Support  | \$ <u>none</u>                                      | \$ <u>n/a</u> | \$ <u>none</u>                | \$ <u>n/a</u> |
| Retirement (such as social<br>security, pensions,<br>annuities, insurance) | \$ <u>\$666.00</u>                                  | \$ <u>n/a</u> | \$ <u>none</u>                | \$ <u>n/a</u> |
| Disability (such as social<br>security, insurance payments)                | \$ <u>none</u>                                      | \$ <u>n/a</u> | \$ <u>none</u>                | \$ <u>n/a</u> |
| Unemployment payments  | \$ <u>none</u>                                      | \$ <u>n/a</u> | \$ <u>none</u>                | \$ <u>n/a</u> |
| Public-assistance<br>(such as welfare)                                     | \$ <u>none</u>                                      | \$ <u>n/a</u> | \$ <u>none</u>                | \$ <u>n/a</u> |
| Other (specify): <u>rental income</u>                                      | \$ <u>775.00</u>                                    | \$ <u>n/a</u> | \$ <u>850.00</u>              | \$ <u>n/a</u> |
| <b>Total monthly income:</b>   | \$ <u>1441.00</u>                                   | \$ <u>n/a</u> | \$ <u>1516.00</u>             | \$ <u>n/a</u> |

2. List your employment history for the past two years, most recent first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of Employment | Gross monthly pay |
|----------|---------|---------------------|-------------------|
| none     | none    | none                | \$ none           |
|          |         |                     | \$                |
|          |         |                     | \$                |

3. List your spouse's employment history for the past two years, most recent employer first. (Gross monthly pay is before taxes or other deductions.)

| Employer | Address | Dates of Employment | Gross monthly pay |
|----------|---------|---------------------|-------------------|
| n/a      | n/a     | n/a                 | \$ n/a            |
|          |         |                     | \$                |
|          |         |                     | \$                |

4. How much cash do you and your spouse have? \$ 300.00  
Below, state any money you or your spouse have in bank accounts or in any other financial institution.

| Type of account (e.g., checking or savings) | Amount you have | Amount your spouse has |
|---|-----------------|------------------------|
| checking                                    | \$ 300.00       | \$ n/a                 |
|   | \$              | \$                     |
|   | \$              | \$                     |

5. List the assets, and their values, which you own or your spouse owns. Do not list clothing and ordinary household furnishings.

☐ Home  
Value n/a

☐ Other real estate  
Value n/a

☐ Motor Vehicle #1  
Year, make & model n/a  
Value

☐ Motor Vehicle #2  
Year, make & model n/a  
Value

☐ Other assets  
Description n/a  
Value

6. State every person, business, or organization owing you or your spouse money, and the amount owed.

| Person owing you or your spouse money | Amount owed to you | Amount owed to your spouse |
|---------------------------------------|--------------------|----------------------------|
| n/a                                   | \$ n/a             | \$ n/a                     |
| _____                                 | \$ _____           | \$ _____                   |
| _____                                 | \$ _____           | \$ _____                   |

7. State the persons who rely on you or your spouse for support. For minor children, list initials instead of names (e.g. "J.S." instead of "John Smith").

| Name  | Relationship | Age   |
|-------|--------------|-------|
| n/a   | n/a          | n/a   |
| _____ | _____        | _____ |
| _____ | _____        | _____ |
| _____ | _____        | _____ |

8. Estimate the average monthly expenses of you and your family. Show separately the amounts paid by your spouse. Adjust any payments that are made weekly, biweekly, quarterly, or annually to show the monthly rate.

|   | You       | Your spouse |
|---|-----------|-------------|
| Rent or home-mortgage payment<br>(include lot rented for mobile home)                               | \$ 334.00 | \$ n/a      |
| Are real estate taxes included? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No |           |             |
| Is property insurance included? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No |           |             |
| Utilities (electricity, heating fuel,<br>water, sewer, and telephone)                               | \$ 654.00 | \$ n/a      |
| Home maintenance (repairs and upkeep)   | \$ 42.00  | \$ n/a      |
| Food  | \$ 280.00 | \$ n/a      |
| Clothing  | \$ 20.00  | \$ n/a      |
| Laundry and dry-cleaning  | \$ n/a    | \$ n/a      |
| Medical and dental expenses   | \$ n/a    | \$ n/a      |



|  | You               | Your spouse   |
|--|-------------------|---------------|
| Transportation (not including motor vehicle payments)  | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Recreation, entertainment, newspapers, magazines, etc.   | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Insurance (not deducted from wages or included in mortgage payments)                           |                   |               |
| Homeowner's or renter's  | \$ <u>146.44</u>  | \$ <u>n/a</u> |
| Life   | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Health   | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Motor Vehicle  | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Other: _____   | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Taxes (not deducted from wages or included in mortgage payments)                               |                   |               |
| (specify): _____   | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Installment payments   |                   |               |
| Motor Vehicle  | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Credit card(s)   | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Department store(s)  | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Other: _____   | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Alimony, maintenance, and support paid to others   | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Regular expenses for operation of business, profession,<br>or farm (attach detailed statement) | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| Other (specify): _____   | \$ <u>n/a</u>     | \$ <u>n/a</u> |
| <b>Total monthly expenses:</b>   | \$ <u>1476.00</u> | \$ <u>n/a</u> |

9. Do you expect any major changes to your monthly income or expenses or in your assets or liabilities during the next 12 months?

☐ Yes    ☒ No    If yes, describe on an attached sheet.

10. Have you paid – or will you be paying – an attorney any money for services in connection with this case, including the completion of this form?    ☐ Yes    ☒ No

If yes, how much? \_\_\_\_\_

If yes, state the attorney's name, address, and telephone number:

11. Have you paid—or will you be paying—anyone other than an attorney (such as a paralegal or a typist) any money for services in connection with this case, including the completion of this form?

☐ Yes    ☒ No

If yes, how much? \_\_\_\_\_

If yes, state the person's name, address, and telephone number:

12. Provide any other information that will help explain why you cannot pay the costs of this case.

Due to my illness, which was determined in part by expert medical testimony in court to have been caused by City of Chicago et al, I have not been medically able to work since 1984. Citing hardship, lack of available funds.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: July 16 . 2018

Eugene W. Zurek

(Signature)

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Eugene Wzorek — PETITIONER  
(Your Name)

City of Chicago, vs.  
an Illinois Municipal Corporation — RESPONDENT(S)  
[Whose Response is Currently Barred, see Rule 11(e)]  
ON PETITION FOR A WRIT OF CERTIORARI TO

United States Court of Appeals for the Seventh Circuit  
\_\_\_\_\_  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR CASE)

PETITION FOR WRIT OF CERTIORARI

Eugene Wzorek  
(Your Name)

4344 S. Honore  
(Address)

Chicago, Illinois 60609  
(City, State, Zip Code)

773-254-3582  
(Phone Number)

## QUESTION(S) PRESENTED

1. When is an "official record of the court", as being found to be in absence from the court record and thus remaining in-locatable (as perhaps being lost, misplaced, mislabeled, mishandled, stolen, destroyed or otherwise "perpetually missing"), to be cited as "missing" and thus standing in default of Federal Statute and requirements of evidence by high officials of the court, regardless of what effect this determination might have on any ruling/s?

2. When, or how, is it EVER "appropriate" for Plaintiff, Defendant, or any other officials, assigns or representatives of the court to ATTEMPT to hide, conceal, obfuscate, impede, impair, deride, degrade, defame, or otherwise prevent the full presentation of court-appointed expert witness in sworn medical testimony, that as having happened with Defendant's full participation and agreement with proceedings in cross examination; and if ever so, then under what conditions, and thus how many times may this occur, before Summary Judgement is issued against responsible parties by and as direct result of default of Rules of Evidence, nul tiel record, trial by record, and or Rules of the Court?

## LIST OF PARTIES

- ☒ All parties appear in the caption of the case on the cover page.
- ☐ All parties **do not** appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## TABLE OF CONTENTS

|  |   |
|--|---|
| OPINIONS BELOW .....                                   | 1 |
| JURISDICTION.....                                      |   |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... |   |
| STATEMENT OF THE CASE .....                            |   |
| REASONS FOR GRANTING THE WRIT .....                    |   |
| CONCLUSION.....  |   |

## INDEX TO APPENDICES

|            |   |
|------------|---|
| APPENDIX A | USCOA for the Seventh Circuit, case 906 - F2D - 1180,<br>case nos. 89-1868, 89-2988 - decision, 13 July 1990                      |
| APPENDIX B | With exception of material in Appendix A,<br>all other materials included as evidence<br>are included in attachment (A-Q) to this |
| APPENDIX C | motion, in direct supplement to this motion.<br>Citing pro se, in forma pauperis, by  |
| APPENDIX D | Leave of the Court.   |
| APPENDIX E |   |
| APPENDIX F |   |

## TABLE OF AUTHORITIES CITED

### CASES

### PAGE NUMBER

With exception of the case cited below, then as Case of Precedent under Shakman all case information cited herein refers to #84-CV-9978 and associated case numbers, as appearing within the enclosed motion and contained herein (including the attendant attachments thereof):

|  |        |
|--|--------|
| Seventh Circuit Federal District Appeals Court,  | 16-17, |
| Smith v. U.S. District Court Officers, 98-1423,  | 17,    |
| 98-1548, 203 F.3d 440 (2000); citation of        | 21-22, |
| the opinion of Judge Richard Posner, regarding   | 29-30  |
| mechanical audio tape recordings of proceedings. |        |

### STATUTES AND RULES

Please see page following, which bears section heading:  
"CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED"

### OTHER

With exception of material in Appendix A, all other materials included as evidence are included in attachment (A-Q) to this motion, in direct supplement to this motion. Citing pro se, in forma pauperis, by Leave of the Court.

IN THE  
SUPREME COURT OF THE UNITED STATES  
  
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

**OPINIONS BELOW**

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is USCOA Seventh Circuit, 906 - F2d - 1180,  
☒ reported at case nos. 89-1868, 89-2988; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the United States district court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

☐ For cases from **state courts**: n/a; #84-CV-9978 began  
at Federal courts, due to Shakman.

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.



## JURISDICTION

[ ] For cases from **federal courts**:

The date on which the United States Court of Appeals decided my case was 13 July, 1990.

[ ] No petition for rehearing was timely filed in my case.

[x] A timely petition for rehearing was denied by the United States Court of Appeals on the following date: see NOTE below, and a copy of the order denying rehearing appears at Appendix n/a.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1254(1).

(NOTE, re "JURISDICTION": re-filing was timely, however record remains hidden in appellate court; record unavailable. Filing for Plaintiff was James Chesloe, motion researched by Steven Becker.)

[ ] For cases from **state courts**: n/a; #84-CV-9978 began at Federal courts, due to Shakman.

The date on which the highest state court decided my case was \_\_\_\_\_.  
A copy of that decision appears at Appendix \_\_\_\_\_.

[ ] A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

[ ] An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A.

The jurisdiction of this Court is invoked under 28 U. S. C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 2, United States Constitution  
provides in pertinent part:

The citizens of each State shall be entitled to all  
privileges and immunities of citizens in the several states.

The First Amendment to the United States Constitution  
provides in pertinent part:

Congress shall make no law... abridging the freedom of speech,  
or of the press; or of the right of the people peaceably to  
assemble, and to petition the government for a redress of  
grievances.

The Fifth Amendment to the United States Constitution  
provides in pertinent part:

No person shall... be deprived of life, liberty, or property,  
without due process of law;...

Section 1 of the Fourteenth Amendment to the United States Constitution  
provides in pertinent part:

... nor shall any State deprive any person of life, liberty,  
or property, without due process of law; nor deny to any person  
within its jurisdiction the equal protection of the laws.

28 U.S.C. 753(b) provides in pertinent part:

Each session of the court... shall be recorded verbatim by  
shorthand, mechanical means, electric sound recording, ...

The original notes or other original records and the  
copy of the transcript in the office of the clerk shall be open  
during office hours to inspection by any person without charge.

18 USC § 2076 provides in pertinent part:

Whoever, being a clerk of a district court of the United  
States, willfully refuses or neglects to make or forward any report,  
certificate, statement, or document as required by law, shall be fined  
under this title or imprisoned not more than one year or both.

Rule 11(e), Illinois Code of Civil Procedure and Rules of Court,  
Smith-Hurd Illinois Annotated Statutes, Federal Court Rules, U.S. Court  
of Appeals for the Seventh Circuit, U.S. District Courts of Illinois,  
Chapters 110 (Practice) and 110A, (Practice Rules), Received to August 12,  
1987, provides in pertinent part:

... The party who has withdrawn the record may not file a brief  
or petition for rehearing until the record has been returned  
to the clerk's office from which it was withdrawn...

Failure of a party to return the record to the clerk  
may be treated as contempt of this court.

## STATEMENT OF THE CASE

Case #84-CV-9978 begins 16 Nov. 1986 with Plaintiff's filing of a Civil Rights case under The Shakman Consent Decree, Defendant being City of Chicago, An Illinois Municipal Corporation.

On 11/06/87, in Northern District Ill. E.D., Judge Bernard Martin Decker decides against Defendant's (City of Chicago et al) Motion for Summary Judgement; case is reassigned to Judge Brian Barnett Duff 31 Dec. 1987.

After hearings and trial by bench (as required under Shakman), on 21 March 1989 Justice Duff issues a favorable decision to Plaintiff, Eugene Wzorek, in form of Equitable Award in amount of \$145,160.68.

On 04/27/89, Plaintiff files motion to direct Defendant to pay final judgement; on the same day, Defendant files EMERGENCY NOTICE OF APPEAL with USCOA Seventh Circuit for stay of execution, judgement and wavier of bond, pending appeal; a temporary stay is granted.

Plaintiff, whom has suffered psychological damage at the hands of Defendant, already stands in need of medical treatment in order to return to employ. On 16 Aug. 1989, court appointed expert witness Dr. Jan Fawcett gives sworn testimony to Northern District Ill. E.D., as FOR THE THIRD TIME (Dr. Fawcett's first two appearances before Justice Duff being 01 and 02 November, 1988).

On 06 Sept. 1989, Judge Duff again orders in favor of Plaintiff, the following: to increase back pay award by \$14,500.00, adding prejudgement interest of \$362.50; further awarding Plaintiff "front pay" in amount of 33,518.17; and in order to provide for Plaintiff's rather extensive medically necessary psychiatric treatment, so that a reasonable conclusion might be made by the Court as to reinstatement to employ, Justice Duff orders additional amount up to \$150,000.00.

Then on 11 May 1990, Seventh Circuit Appellate Court heard argument in Defendant's appeal of previous equitable decisions in #84-CV-9978, these cases being #89-1868 and #89-2988; at that time, then-assistant U.S. Attorney Lawrence Rosenthal performed Defendant's oral arguments, thus taking on the role of acting Corporation Counsel for Defendant.

Then on or about 26 June 1990, as per signed clerk's receipt, USCOA Seventh Circuit, acting Corporation Counsel for Defendant Rosenthal did physically remove the master audio tape recording of the court's 11 May 1990 hearing from court record; and since to present date, no record of that tape's return can be found,

"STATEMENT OF THE CASE" Concludes on following page

"STATEMENT OF THE CASE", Continued from previous page

nor can any record or copy of said tape from 10 May 1990, similarly be found or located; thus Defendant's acting Corporation Counsel Lawrence Rosenthal did commit a direct violation of Rule 11(e), Illinois Code of Civil Procedure and Rules of Court (12 Aug. 1987), on Defendant's behalf (as clearly to detriment of all parties except perhaps Defendant); thus, by stated intent of Rule 11(e), holding Defendant's acting Corporation Counsel Rosenthal and Defendant, City of Chicago et al, as potentially in contempt of court, but also by stated intent in Rule 11(e), responsible parties are barred from filing any "brief or petition for rehearing until the record has been returned to the clerk's office from which it was withdrawn..."

Approximately 17 days later, on 13 July 1990, WHILE MASTER AUDIO TAPE RECORDING EVIDENCE of 10 May 1990 oral arguments remains in absence from Court record, having been signed from clerk's possession by Defendant's acting Corporation Counsel Rosenthal, USCOA Seventh Circuit issues ruling in #89-1868 / #89-2988 reversing Judge Duff's 06 Sept. 1989 equitable award in judgement, amount up to \$150,000.00 as set aside for purposes of remediating Plaintiff's medical damages, so the Court might proceed with reinstatement hearings; even as Rule 11(e) CLEARLY BARRS RESPONSIBLE PARTIES from filing ("entertaining") any such "brief or petition for rehearing until the record has been returned to the clerk's office from which it was withdrawn..."

Thus begins a series of retrenchments and retracements by the lower courts, whom ultimately seem "incapable" of grasping the simple and singular wording of Rule 11(e) as for all intents and purposes regarding the case of #84-CV-9978, Eugene Wzorek, Plaintiff, v. City of Chicago et al, Defendant, wherein RECORD WAS NEVER RETURNED.

Plaintiff's first inklings of this "conflict" of record removal by Defendant's acting Corporation Counsel, and subsequent (post filing, post removal) decision by USCOA Seventh Circuit happened while reviewing Court records and the case docket in preparation for this Supreme Court petition, as during the first week of June, 2018, but no later than the first week of July, 2018, rendering laches, res judica, etc. for this Petition as not applicable;

While in any case, Plaintiff herein cites that Defendant's and Defendant's acting Corporation Counsel's efforts at Fraudulent Concealment of these and other actions tolls any otherwise applicable statute of limitations in this most egregious violation of Plaintiff's Due Process and Civil Rights.

## REASONS FOR GRANTING THE PETITION

- a. The Court must answer regarding a First Amendment filing.
- b. The Court must answer regarding a Rule 11(e) violation.
- c. The Court must stand in Equity on behalf of Plaintiff, due to Plaintiff / Petitioner's standing and previous Equitable Awards, as Case of Precedent in the Shakman Consent Decree.
- d. Plaintiff's timeliest and most well-intentioned efforts to date have been studiously "avoided" and or refused at each and every previous citation and or filing regarding Defendant's outstanding Rule 11(e) violation in the lower courts (those courts being Northern District Illinois E.D., and USCOA for the Seventh Circuit).
- e. Plaintiff's timeliest and most-well-intentioned efforts in the lower courts to date have been studiously "avoided" and or refused at each and every previous citation and or filing regarding any mention whatsoever of erroneous, falsified, and or missing transcripts regarding key witness testimony and court dates (those courts being Northern District Illinois E.D., and USCOA for the Seventh Circuit).
- f. Plaintiff's timeliest and most well-intentioned efforts to date regarding certain Awards in Equity have been studiously "avoided" and or overturned and or refused during virtually every previous citation and or filing regarding Plaintiff's initial three (3) prevailing decisions in Shakman, including two (2) Equitable Award/s (those courts being USCOA for the Seventh Circuit, and then later Northern District Illinois E.D. [from whose bench said prevailing Decisions and Awards originated]); obfuscation and concealment is such that even today, no mention whatsoever of the City's historic loss of Shakman to Plaintiff and Petitioner Eugene Wzorek can be found or located in the entire Fifth Report of the Special Master on Shakman (filed 27 April 2017, Case: 1:69-cv-02145, Document #: 4988) - duplication of which is omitted herein, since report as cited is readily available elsewhere.

THIS LISTING CONTINUES ON THE FOLLOWING PAGE.

REASONS FOR GRANTING THE PETITION (continued from previous page)

g. Plaintiff has been suffering for more than 30 years, being rendered "unemployable" by psychological conditions, source of which Defendant, City of Chicago et al, was prior deemed "responsible" by way of Court hearing and decision, as by expert medical testimony (Dr. Jan Fawcett, Court appointed expert witness, with other medical witnesses being barred from testimony), and also as by Plaintiff's testimony; while Plaintiff's efforts to receive adequate treatment and or compensation for the same have been studiously "avoided" and or refused during virtually every subsequent filing to recover Plaintiff's aforementioned Equitable Award/s and or medically necessary treatment, resulting in conditions which literally "stole" Plaintiff's best and most crucial earnings years, livelihood, health, retirement and pension possibilities, but also his quality of life; this as per Defendant's demonstrated will and intent, as exhibited by behavior both in and out of the court room.

h. Defendant's Fraudulent Concealment tolls any applicable statute of limitations - this, by way of removing, hiding, or otherwise obscuring Court documents of case record; and or else by concealing facts and medical evidence of the case by obscuring, hiding, removing from record, denying or otherwise engaging in "negligent record keeping" or omission as regards matters of Court records in evidence, as those being hidden from Plaintiff, but also as being hidden from the Court itself (affected courts being Northern District Illinois E.D., and USCOA for the Seventh Circuit; but as of this Petition, then also revealed as being hidden from view of this very Supreme Court of The United States.)

i. Plaintiff Wzorek's case #84-CV-9978 began in, was tried, and continues to this present day as a veritable "case study" in the detrimental, personally devastating effects of political patronage against workers in the workplace, with all this statement implies. It is well within the very best of public interest, and the interest of this most Honorable Court of the United States, to grant hearing and or summary judgement for Plaintiff as regards the abuses and official offenses cited herein, that this most esteemed body might stand in opposition to "political winds of the day" and, in so doing, may strive to secure a better, more equal, and more prosperous future for the citizens of these United States of tomorrow.

## CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eugene W. Zerach

Date: July 16, 2018

## CERTIFICATE OF COMPLIANCE

No. \_\_\_\_\_

Eugene Wzorek,  
Petitioner

v.

City of Chicago,  
An Illinois Municipal Corporation,  
Respondent

*[Whose Response is Currently Barred,  
Under Rule 11(e)]*

As required by Supreme Court Rule 33.1(h),  
I certify that this petition for Writ of Certiorari  
contains approximately 8,985 words, excluding the parts  
of the Petition that are exempted by Supreme Court  
Rule 33.1(d).

All text in the Petition is 12 point Century  
Schoolbook, unless otherwise specified in guidelines;  
text and images in Appendix / evidence in attachments  
appears as it exists, prior to PDF formatting for size only.

As per formatting, I did my best to obtain the  
"booklet" format for Petition; accompanying documents  
in preliminary pages, Appendix and attachments will  
all be found in 8.5 x 11 format, as many of these were  
provided in the same. Citing financial hardship,  
*in forma pauperis*, Leave of the Court.

I declare under penalty of perjury that the  
foregoing is true and correct, to the best of my  
abilities to determine.

Executed on 16 day of JULY, 2018

Eugene Wzorek

Eugene Wzorek  
4344 Honore Street  
Chicago, Illinois 60609

- xx -



No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
\_\_\_\_\_

Eugene Wzorek — PETITIONER  
(Your Name)

VS.  
City of Chicago,  
an Illinois Municipal Corporation — RESPONDENT(S)  
[Whose Response is Currently Barred, see Rule 11(e)]

**PROOF OF SERVICE**

I, Eugene Wzorek, representing pro se, do swear or declare that on this date, JULY 17, 2018, as required by Supreme Court Rule 29 I have served the enclosed MOTION FOR LEAVE TO PROCEED *IN FORMA PAUPERIS* and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and addresses of those served are as follows:

Edward Siskel, Office of Corporation Counsel, City of Chicago  
30 North LaSalle Street, Suite 700  
Chicago, Illinois 60602

I declare under penalty of perjury that the foregoing is true and correct.

Executed on JULY 17, 2018

Eugene Wzorek  
(Signature)

No.

IN THE

**Supreme Court of the United States**

EUGENE WZOREK,  
*Plaintiff and Petitioner,*

v.

CITY OF CHICAGO,  
AN ILLINOIS MUNICIPAL CORPORATION,  
*Defendant and Respondent*  
*[Whose Response is Currently Barred, See Rule 11(e)]*

**PETITION FOR EMERGENCY HEARING,  
WRIT OF CERTIORARI**

TO US COURT OF APPEALS, SEVENTH CIRCUIT

EUGENE WZOREK,  
*representing pro se*  
4344 S. HONORE STREET  
CHICAGO, ILLINOIS 60609  
773-254-3582

Petitioner and Plaintiff, Eugene Wzorek, presenting to this body Petition for Emergency Hearing, Writ of Certiorari, regarding the following matters in Northern District Ill. E.D. case #84-CV-9978, Case of Precedent in Shakman Consent Decree (Wzorek being the only prevailing Plaintiff in Shakman), as per:

**The direct and indirect omission of sworn court testimony by expert witness and physician, Dr. Jan Fawcett, as regards case #84-CV-9978, Wzorek v City of Chicago; and then, as regards actions undertaken by sworn officers of the Court, and possibly others, in order to evade detection of Defendant's own mis-dealings in these and other matters of deception and or concealment of matters in court record, as demonstrated by the absence of medical testimony of record by court appointed expert witness, Dr. Jan Fawcett, during these and other related Federal proceedings, as cited herein.**

This matter is longstanding and of utmost importance to the Court, since Wzorek v. City of Chicago et al is the only case of record wherein Defendants (City of Chicago) lost a Shakman during the more than 40-year history of the Shakman Consent Decree – making Wzorek v. City of Chicago the Case of Precedent in matters of political patronage, which is and remains the basis of the Shakman Consent Decree.

Despite Plaintiff Wzorek's "winning in court", Plaintiff contends that subsequent and improper post-decision filings and omissions by Defendant have caused grievous, un-tolled, unaccounted for, lasting and ongoing harm to Plaintiff, Eugene Wzorek; and that these violations against Plaintiff are so extreme and persistent as to exist to the present day, consisting of continual and ongoing violations of Plaintiff's (Eugene Wzorek) First Amendment Rights;

But also, as continuing violations under the Shak-

man Consent Decree, in which this case was originally heard and decided, this places the need for an honorable decision and resolution to the demonstrated conflicts of interest and official misconduct at the mishandling of Plaintiff Eugene Wzorek, as by Defendants, City of Chicago et al, and potentially others, as existing firmly within the Public's Best Interest.

As per case docket (attachment A), #84-CV-9978 began 16 November 1984 as by Plaintiff filing with the Court. Rather than "swift justice", the case was delayed at every possible turn, in large part by activities of Defendant (City of Chicago) for several years until late 1987 when arguments were presented in Northern District Illinois E.D. and a decision against Defendant's (City of Chicago et al) Motion for Summary Judgement Against Plaintiff was denied, Judge Bernard Martin Decker issuing that memorandum opinion (attachment A, items 48 and 49, 11/06/87; also attachment M, #84-CV-9978, Decker opinion, 05 November 1987). Shortly after and owing to declining health, Judge Decker had the case reassigned.

On 31 December 1987, Judge Brian Barnett Duff was assigned #84-CV-9978 for continuation (attachment A, case docket, top of page 4 with "--" listed as item number, "Pursuant to the order of the Executive Committee, cause is reassigned to the calendar of Judge Duff").

On 01 and 02 November 1988 as part of "hearings on damages" (attachment A, item 100; also item 104) Dr. Jan Fawcett was summoned to give sworn expert medical testimony in Wzorek v City of Chicago, #84-CV-9978, AS THE COURT'S APPOINTED EXPERT WITNESS (attachment A, item 90, 08/01/88); wherein after the suppression of testimony of two prior requested medical witnesses at Defendant's objection (those witnesses being Dr. Nicholas Borden and Dr. Harold Weiss), Judge Brian Barnett Duff appoints Dr.

Jan Fawcett as expert witness for the Court, with Defendant's participation.

Following bench trial and hearings, on 21 March 1989 Judge Duff issues a second decision favorable to Plaintiff, Wzorek, in the form of an Equitable Award in amount of \$145,160.68; (attachment A, item 118, 03/21/89; also attachment B, 708 F. Supp. 954, Eugene Wzorek v. City of Chicago, No. 84-CV-9978, 21 March 1989).

The 01 and 02 November 1988 court appearances by Dr. Fawcett occurred during hearings regarding damages against Plaintiff Wzorek, whom had been prior examined by Dr. Fawcett but also two other physicians, Dr. Nicholas Borden and Dr. Harold Weiss. As per existing medical testimony, Plaintiff's illness was deemed the responsibility of Defendant in whole or as its most significant part.

As of the earliest dates of this critical medical testimony, Defendant undertook what can only be described as a "coordinated effort to suppress court ordered expert testimony", that of Dr. Jan Fawcett and others. As by the record, it now appears that effort was largely successful, though evidence of the deceptions undertaken by Defendants (City of Chicago et al) does exist. The remainder of this Petition more clearly outlines the various deceptions and methods used to suppress court appointed testimony of expert witness, Dr. Jan Fawcett, as per Eugene Wzorek v. City of Chicago et al, #84-CV-9978.

### **Continuing**

On 04/27/89, Plaintiff Wzorek files motion to direct City of Chicago to pay final judgement (attachment A, items 121 / 122, 04/27/89); on the same day, 04/27/89, Defendant files EMERGENCY NOTICE OF APPEAL with Seventh Circuit, motion for stay of execution of judgement and for wavier of bond pending appeal (at-

attachment A, item 123, 04/27/89).

On 04 August 1989 (attachment A, items 131, 132, 133), Judge Duff orders Plaintiff's expert witness, Dr. Jan Fawcett to give deposition in open court as part of Defendant's examination, in response to Defendant's earlier efforts to bar expert witness testimony, by the record upholding Defendant's motion to bar testimony of Petitioner's "expert witness and previously undisclosed witnesses" in whole or part; this effectively bars two medical witnesses previously mentioned, Dr. Nicholas Borden and Dr. Harold Weiss, from giving sworn medical testimony, though neither Dr. Borden nor Dr. Weiss was under any sanction by the AMA, nor had either been sanctioned by any court for giving false or misleading testimony, rendering Defendant's motion as "highly questionable".

#### **Findings, August 1989**

As per court transcripts for hearing, 04 August 1989, Judge Duff states the following AS ALREADY HAVING OCCURRED (attachment N, transcript 04 August 1989, pg. 150 line 18 through pg. 151 line 7): "Mr. Ex [corporation counsel for Defendant], I made a ruling. I said how much money you should give this man [Plaintiff, Wzorek]. I also said that he should be able to take psychiatric care for the next six months, so that after those six months, I could make a determination of whether or not he [Wzorek] should be reinstated. You [Defendant] don't want him to have any money so you went upstairs [USCOA] and got a stay on some basis I still don't understand, and the man [Wzorek] doesn't have any money to pay a psychiatrist to do what he has to do in order for me to reinstate him. Now, you [Defendant] have set up a situation by your own choosing to deprive the' {sic} man of-any {sic} wages or any opportunity to have medical care. So Mr. Gubbins [Plaintiff's attorney] asked could we advance. {sic} this so we can take the pain off."

Judge Duff continues, reaffirming the intent of his original order, alluding to the presence of PRIOR sworn medical testimony; further, Judge Duff restates his contention that Defendant (City of Chicago et al) is directly responsible in depriving Plaintiff and Petitioner, Eugene Wzorek, of funds for medically necessary care (attachment N, transcript 04 August 1989, pg. 151, lines 10 through 18): "That's because of your [Defendant's] actions, not Gubbins' [Plaintiff's attorney] actions. His response to the situation was only because of the City just absolutely refusing to let the nature and spirit of my order be conducted by depriving the man [Plaintiff, Wzorek] of any money by which he could have his psychiatric care that he must have for me to make the ruling."

Judge Duff cites the ultimate goal of treatment for Plaintiff, Wzorek, is so that Wzorek may be reinstated to employment (attachment N, transcript 04 August 1989, pg. 151, lines 16 through page 152, line 2), citing potential for long-term ramifications of Defendant's actions:

"Now that's a dilemma of great impact. It was of your 'making {sic}. You make it; we will resolve it. This is an equitable proceeding. I am going to see to it that I get the psychiatric reports on this man [Plaintiff, Wzorek] before the City is off the hook. The front pay, if that's what you want to call it, is going to depend upon your allowing that to happen, okay? So you [Defendant] are not going to sit there and not let this man [Wzorek] get the psychiatric care that's going to be necessary for the doctor to be able to make a decision as to whether he should be reinstated. If this case has to take 20 years, I will keep jurisdiction over it."

Duff then reemphasizes the equitable nature of Plaintiff's award, and proceedings; but also alludes to perhaps coercion or deception in Defendant's dealings with Seventh Circuit; and again, Judge Duff cites

Defendant's direct responsibility for continuation of Plaintiff's illness and suffering (attachment N, transcript 04 August 1989, pg. 152, line 6 through 11):

"As far as I'm concerned, I made a ruling on a liquidated amount. You [Defendant] don't want to pay it. Interest is going to run, and I know the City has now got the Seventh Circuit to say that they [Defendant] don't have to pay what they [Defendant] owe. That's a whole other story. This is an equitable ruling, and it's a function where the City is responsible for this man's [Plaintiff, Wzorek] psychological deterioration.){sic}"

On 16 August 1989, Dr. Jan Fawcett gives sworn testimony before the Court in #84-CV-9978 for the third time. Dr. Fawcett's first two court appearances are 01 and 02 November 1988 (attachment A, items 100 through 103, and item 104), wherein Dr. Fawcett testifies as to Plaintiff Wzorek's psychological condition, disposition, and recommends a medically effective treatment for the conditions of which Wzorek now suffers (attachment C, Transcript, 16 August 1989, accompanying notations as cover sheet), evidenced by Judge Duff's noted comments of 04 August 1989 citing prior medical testimony, which occur prior to Dr. Fawcett's 16 August 1989 testimony and third appearance before the Court, which is now (and after many years' absence) finally in the case record.

In support of this contention, on pg. 8 lines 19 through 23 of the 16 August 1989 transcript, Duff cites that Dr. Fawcett's testimony is a return appearance to the court, and alludes to said prior (01 and 02 November 1988) testimony; however there is no prior "existing" testimony for Dr. Fawcett in the Court record, as can been found to date; therefore it appears that Dr. Fawcett's 01 and 02 November 1988 appearance in sworn testimony, as the Court's medical witness in #84-CV-9978, has been "cleansed" or otherwise removed from official record in the case, even as it re-



quired several years for a “reasonably accurate” copy of the 16 August 1989 transcript of court proceedings to be “produced” by the Court’s transcriptionists and clerks.

[Footnote: attachment A, case docket, item #222 dated 11 October 1994; this citation denotes the apparent first “appearance” of a reasonably accurate and proper transcription of Dr. Fawcett’s sworn testimony – to which Plaintiff and Petitioner, Eugene Wzorek, also possess two “earlier” clerk-supplied versions of said “transcript” from 16 August 1989, both of which appear to be “spoiled” or otherwise obscured by specific methodologies - consisting of the insertion of “wrong pages” not in court testimony for the case, multiple mis-datings on the cover page, being stamped with unrelated case numbers, carrying different transcriptionist’s signatures, etc. - thus rendering Dr. Fawcett’s sworn testimony in each of these earlier instances as remaining either unpublished (in one instance, Dr. Fawcett’s testimony is missing entirely) or, if present, then as existing while listed under an unrelated case number and date, rendering record of Dr. Fawcett’s 16 August 1989 sworn testimony via either of these earlier two “versions” of clerk supplied “transcripts” as “unavailable” by way of any normal search request; and, Wzorek contends that this “condition of unavailability” remained true for anyone seeking a copy of Dr. Fawcett’s court testimony until 11 October 1994, as cited in the case docket item 222;

[It was only through Plaintiff Wzorek’s persistence and years of requests that the final, “reasonably accurate” transcript was introduced to the Court – attachment A, item 222, dated 11 October 1994; It is this “reasonably accurate” transcript of 16 August 1989 which Plaintiff provides herein, for the record and for all purposes of this filing;

[This Court stands notified that Plaintiff is in possession of original copies of court provided transcripts, court stamped and signed paper copies of the previously cited “mistakes” for 16 August 1989, each of which obscures Dr. Fawcett’s testimony in multiple ways - and thus, Plaintiff Wzorek stands ready to produce these “fraudulent” copies in their entire and unaltered physical form, as complete with contemporaneous clerk- and transcriptionist-applied handwritten sticky notes, upon Your Honors’ summons.]

It is important to note that as of this filing (July of 2018), no audiotope recording or transcript (both

of which constitute “official” court record) of Dr. Fawcett’s 01 and 02 November 1988 testimony has ever been furnished to Plaintiff Wzorek by any official of the Court, and have in fact been denied to Plaintiff at every turn when requested; this omission of sworn court testimony from evidence of record exists in direct contradiction to the Guide to Judiciary Policy, Volume 6, Court Reporting, section 120, “Authority” (attachment D, version: transmittal 06-011, May 1, 2018).

It is also important to note that as of Defendant’s filing of EMERGENCY NOTICE OF APPEAL with Seventh Circuit, dated 04/27/89, then of the many specific and listed items in docket where transcripts are furnished to USCOA Seventh Circuit, no specific mention whatsoever if made regarding furnishing transcripts which bear the hearing dates “01 and or 02 November 1988”, wherein Dr. Fawcett’s previous sworn expert witness testimony was given to the Northern District Illinois E.D.; nor does it appear as if Dr. Fawcett’s later 16 August 1989 expert witness testimony was ever furnished to USCOA Seventh Circuit Court, as by Northern District Ill. E.D. clerks and or staff (attachment A, specifically items # 125 dated 05/11/89, #126 dated 06/02/89, #127 dated 06/09/89, #139 dated 08/25/89, #147 dated 09/12/89, #151 dated 09/18/89, and #155 dated 10/05/89).

This omission of sworn testimony by court-appointed expert medical witness Dr. Jan Fawcett from Court’s official record, as for the testimony dates of 01 and 02 November 1988 - and for the moment, excepting the existence of Dr. Fawcett’s sworn testimony AS RECORDED in transcripts from 16 August 1989 proceedings in #84-CV-9978, which themselves were not “readily available” prior to 11 October 1994, according to the case docket and Plaintiff Eugene Wzorek’s best recollection (attachment A, item 222, 11 October 1994), represent a “gap” of more than 5 years during

which accurate transcripts did not exist for any of Dr. Fawcett's three instances of critical medical testimony in this case – reflecting a general, widespread, prolonged and profound disregard for Plaintiff's due process rights, as it also constitutes a protracted and ongoing violation of Petitioner and Plaintiff Eugene Wzorek's First Amendment rights, with Plaintiff being treated in callous disregard, as per any such requests for tapes or transcripts by persons associated with Defendant (City of Chicago et al), Northern District Court Illinois, E.D., and even USCOA Seventh Circuit; but also potentially by any and all applicable court transcriptionists and clerks of record, whom are charged by the court with these official record keeping tasks, as specific to these and other glaring omissions in the Court's official legal record regarding #84-CV-9978, and related case numbers [those case numbers being #84-CV-9978, as the principal case; and cases #89-1868 and #89-2988 at the appellate level, then later #95-3470; and #05-CV-4141; but also something known as "94 C 1088", a case number which per Wzorek seems only to exist as a date stamp upon the cover page of one of the aforementioned "fraudulent" copies of 16 August 1989 transcripts in Plaintiff's main case – and this "mistaken" case stamp existed as being the only "transcript" available from the court for that case hearing, over the course of two flagrantly "botched" prepared copies furnished for that transcript date, these "mistakes" standing for more than five years before finally being corrected on 11 October 1994, in the form of the prepared transcript for that date, as Plaintiff provides herein].

Further, Plaintiff and Petitioner Wzorek contends that these "omissions" and "botched transcripts" constitute direct and compelling evidence of the "long reach of Chicago politics" such that not even the nation's highest courts and Court personnel are immune from the ill effects and "political duties" of partisan

political patronage, emphasizing the Public Interest in Wzorek v. City of Chicago et al;

But also stand as demanding the scrutiny of Your Honors, since by any reasonable account and at the most basic level, these “omissions” - as “mistakes” which were allowed to continue and then repeat, or else mutate and be held for posterity (as in Dr. Fawcett’s “perpetual” 01 and 01 November 1988 omissions of testimony), over multiple requests for correction, despite proper citations and repeated efforts by Plaintiff and Petitioner Wzorek, as having happened with multiple sworn court officers and functionaries over a period of many years - constitutes not merely an active and ongoing violation of Plaintiff Eugene Wzorek’s Civil Rights by Defendant (City of Chicago et al); yet more importantly, these “repeated omissions” of court ordered expert testimony stand as an existential threat to the sanctity and integrity of this great Court itself, and to the highest Law of this Land.

### **Continuing**

On 6 September 1989, after re-hearing (for the third time) sworn expert witness testimony regarding Plaintiff’s medical condition, Judge Duff orders to increase the award of back pay by \$14,500.00 and awards prejudgement interest in amount of \$362.50. Then, due to the passing of time since earlier decision, Duff further awards Plaintiff Wzorek “front pay” in the amount of \$33,518.17. Judge Duff also further orders Defendant (City of Chicago et al) to provide for Plaintiff’s court-determined medically necessary psychiatric treatment for a period of two years, up to the amount of \$150,000.00 (attachment E, 718 F. Supp. 1386, Eugene Wzorek v. City of Chicago, #84-CV-9978, 6 September 1989).

Judge Duff’s decision and findings of 6 September 1989 were predicated upon Plaintiff’s sworn testimony, and upon the HISTORY OF SWORN EXPERT MEDI-

CAL TESTIMONY by court-appointed expert medical witness Dr. Jan Fawcett - testimony given in court on 01 and 02 November 1988, and also 16 August 1989 - as regards the cumulative psychological effects which years of maltreatment, denials, "endless" proceedings and numerous other mis-dealings at the hands of various City of Chicago employees, attorneys, associates and assigns had at that time already inflicted upon Plaintiff Wzorek, with illness and psychological damage upon Wzorek being deemed by the Court as Defendant's (City of Chicago et al) responsibility.

Therein Judge Duff attempts to fashion an equitable remedy for Plaintiff and sufferer Eugene Wzorek, based in Dr. Fawcett's sworn expert medical testimony and the Court's best practices, that allows and provides means for recommended months of inpatient care, but also for contiguous and integrated outpatient treatment, any needed therapies and follow-up, after which point Plaintiff is to resume status hearings with the Court in order to determine whether Plaintiff's medical progress and prognosis is adequate to allow Plaintiff to attempt return to regular employ;

By "progress", Judge Duff was not necessarily suggesting a return to City of Chicago employment, but instead refers to Petitioner Wzorek's being mentally and emotionally capable to attempt return to employ within the general workforce whatsoever, since Wzorek's condition was deemed profound, debilitating and chronic, as a direct result of Wzorek's treatment at the hands of Defendant, City of Chicago et al (attachment C, transcript, 16 August 1989, re: Court opinion and Dr. Fawcett's testimony, accompanying notations as cover sheet).

As a matter of this court determined testimony, it is Dr. Fawcett's expert medical opinion that Wzorek was been rendered deeply psychologically affected by a series of mistreatments, beginning no later than

Wzorek's firing by City of Chicago, which previous decisions had already found to be politically motivated, constituting direct violation of the Shakman Consent Decree on part of Defendant (City of Chicago et al) against Plaintiff, Eugene Wzorek (attachment A, item 90, 08/01/88; also attachment C, transcript 16 August 1989, re: Court opinion and Dr. Fawcett's testimony, accompanying notations as cover sheet).

Yet further, it is Dr. Fawcett's expert medical opinion that the condition affecting Wzorek is not only possibly chronic and long term, but also (and at that time) potentially treatable under proper medical supervision and care; and that it was Wzorek's suffering from this same set of medical circumstances and perhaps this alone which had rendered Plaintiff unfit to return to work as a truck driver, whether that as being via reinstatement with City of Chicago or as employ elsewhere, while Wzorek remained buffeted daily from the underlying, untreated conditions and symptoms of the illness (attachment C, Notes, Dr. Fawcett's testimony, transcript 16 August 1989, re: Dr. Fawcett's statements, with accompanying notations as cover sheet).

Your Honors, for the record Eugene Wzorek would never again re-enter the workforce nor even general employment due to his suffering and lack of being able to afford effective treatment for this illness, the effects thereof he suffers unto this day.

Due to a number of critical factors detailed in later court proceedings (attachment C, transcript 16 August 1989, re: court opinion and Dr. Fawcett's testimony), not the least of which was Plaintiff's inability to return to employ as direct result of his ongoing psychological conditions at that time, Wzorek's underlying psychological distress and illness has remained to this day essentially unaddressed and untreated, the effect of which has rendered Petitioner Wzorek chronically unemployed throughout the remainder of his adult life;

yet also, chronically unemployable, as was established and foretold by Dr. Fawcett and attested to by Judge Duff in open court during sworn court testimony at that time, but at minimum, as happening on the 16th of August 1989 (attachment C, Notes as attachment per 16 August 1989 transcript, re: Dr. Fawcett's testimony and Judge Duff's comments, notation in accompanying cover sheet).

It was Judge Duff's court order of 06 September 1989 (attachment E, 718 F. Supp. 1386, Eugene Wzorek v. City of Chicago, #84-CV-9978) which sought to allow Wzorek means, via equitable award, for a combination of extended expert inpatient treatments and therapy, outpatient care and coordinated follow-up, made necessary by Wzorek's illness which the Court (Judge Duff), Plaintiff (Eugene Wzorek) and court-appointed expert witness Dr. Jan Fawcett all held in testimony as being due to the actions of Defendant, City of Chicago et al personnel, representatives, employees, agents, associates and assigns thereof.

#### **Further findings**

a. Judge Duff had prior requested from all attending attorneys to bring to the court comparable decisions and cases, at which point no such cases in equity were ever produced regarding Shakman, at any time or by any of the attorneys; therefore, and since no one had prior prevailed in a Shakman case (nor now, has any one since), Judge Duff during proceedings correctly cited Eugene Wzorek v City of Chicago et al, #84-CV-9978 as the Case of Precedent, and moved forward in hearings accordingly.

b. Judge Duff was also clear during proceedings that as Case of Precedent, Eugene Wzorek v. City of Chicago et al was to proceed under Old English Law and in Equity, wherein decisions thereof are not subject to vagaries of statutory pleadings (attachment C, transcript 16 August 1989, accompanying notations cit-

ing Judge Duff's comments re: the equitable nature of remedy in *Wzorek v. City of Chicago*, as comments to Defendant during proceedings; also attachment N, transcript 04 August 1989, with notations re: Duff's relevant comments as cover sheet).

c. Being that Defendant, City of Chicago et al, had prior entered into standing contract with the Court (attachment F, *Shakman Judgement*, Michael L. Shakman and Paul M. Lurie et al v. The Democratic Organization of Cook County et al, #69-CV-2145, 5 May 1972), then once violated by Defendant in anything as significant as loss at trial, the Shakman Consent Decree (as it is collectively known) offers Defendant (City of Chicago et al in this instance) no particular "protections" under law, and thus was not subject to appeal in statutory pleadings, since Defendant's violation of this longstanding and mutual contract ("consent decree") can only be considered "willful" and "negligent"; hence, Judge Duff correctly cites equitable remedy for *Wzorek* and rules accordingly.

d. Therefore, as of Judge Duff's Court Order of 06 September 1989 (attachment E, 718 F. Supp. 1386, *Wzorek v. City of Chicago et al*, #84-CV-9978), it was already well and prior established in court testimony, and understood by Defendant (City of Chicago et al) that Plaintiff *Wzorek* was being awarded damages in Equity Proceedings, a portion of which was commensurate to necessary, medically required, extensive psychological care, need of which for Plaintiff and sufferer *Wzorek* had been made necessary and or also further aggravated by the direct and indirect actions of Defendant, City of Chicago et al, over the very period of time since the offense which brought Defendant (City of Chicago et al) to the Court's attention in the first place, via Defendant's (City of Chicago et al) court demonstrated and previously cited violations of the Shakman Consent Decree, as occurring against



Plaintiff, Petitioner, and City of Chicago truck driver Eugene Wzorek.

In summary, Your Honors, even during these court proceedings, Defendant City of Chicago et al was utilizing every available means at disposal in order to further punish, penalize, cease and or delay justice for Plaintiff, Petitioner and sufferer Eugene Wzorek; and did so willingly and unceasingly, even after losing the protections and advantages it had traditionally enjoyed prior, this by wilfully violating the Shakman Consent Decree.

### **Writ of Certiorari**

1. On 11 May 1990 during open court, while hearing case # 89-1868 / 89-2988, Seventh Circuit Appellate Judge Frank H. Easterbrook did state to City of Chicago acting Corporation Counsel (and then-Assistant US Attorney) Lawrence Rosenthal, "Didn't you think that some day somebody was going to win [a Shakman] some time?"

Further, in the same hearing on 11 May 1990, Judge Easterbrook stated "If you didn't like this [loss in Shakman, to Plaintiff Wzorek], then why didn't you get rid of the Shakman?" Supplied quotes are from the memory of Petitioner and Plaintiff Eugene Wzorek, whom was present at hearing. [attachment A, item #184, 08/10/90, citing hearing date of 05/11/90, decision of which was entered 13 July 1990]; and yet, these comments suggest that even the Justices of US-COA Seventh Circuit were "scratching their heads" regarding Defendant's (City of Chicago et al) efforts in appeal, since Defendant had already clearly violated a standing consent decree, and thus also a court order and mutually agreed contract currently under court supervision;

Thus and at that time, placing Defendant as currently standing in contempt of a court ordered decree,

the Shakman.

2. After said “coaching” of Defendant’s attorney/s by Justice Easterbrook, USCOA Seventh Circuit went on to hear Defendant’s appeal in Shakman – appeal of which is not provided for under the Shakman, since Shakman exists/existed as a Court Ordered contract and Consent Decree, of which Defendant, City of Chicago et al, was a consenting party and thus also participant signatory.

Once violated by Defendant/s, Shakman protections cannot be honored (or considered honorable) again, since violation of the Contract (Consent Decree) vitiates the contract itself, removing protections which might otherwise be offered to signatories had the Consent Decree not been violated. Hence, no provision for Appeal was given under the Shakman decision, and instead the Court (Northern District Illinois E.D. and USCOA Seventh Circuit) were and remain to this day duty bound under the Shakman decision to carry out Fiduciary, Restorative, and Punitive responsibilities in the instance of any Shakman violation, holding in Equity for Plaintiff/s, whereupon those responsibilities fall upon these justices in particular - though ultimately, as unto Your Honors - as originally ruled upon and agreed to by all parties under the Shakman decision (attachment F, specifically paragraph H2, Shakman Judgement, Michael L. Shakman and Paul M. Lurie et al v. The Democratic Organization of Cook County et al, #69-CV-2145, 5 May 1972).

3. While transcripts of proceedings are indeed court records, and despite multiple attempts by Wzorek at acquiring the same, no such transcripts have ever been provided to Plaintiff Wzorek from the 11 May 1990 hearing in USCOA Seventh Circuit #89-1868 / #89-2988; but even so, “A transcript was made from a tape, but the transcript is not the original; the tape is...We do not think that these should be deemed judicial re-

records, unless some reason is shown to distrust the accuracy of the stenographic transcript,” quote attributed to Judge Richard Posner, Seventh Circuit Federal District Appeals Court, *Smith v. U.S. District Court Officers*, 98-1423, 98-1548, 203 F.3d 440 (2000).

Therefore, in the instance of any identifiable discrepancy in transcripts (or a complete lack of transcripts whatsoever), which in the instance of USCOA Seventh Circuit cases # 89-1868 / #89-2988 have never been made available nor have otherwise ever been furnished to Plaintiff and Petitioner Eugene Wzorek; and since master audio recording tapes of proceedings are to be considered the true record of proceedings, citing Judge Richard Posner, Justice, Seventh Circuit Appellate Court, as per *Smith v. U.S. District Court Officers*, #98-1423 / #98-1548, 203 F.3d 440 (2000); then in and by way of these denials, Plaintiff Eugene Wzorek has been denied his most fundamental First Amendment rights as occurring by the action and inaction on part of Court officials, employees, functionaries and assigns of the Seventh Circuit Appellate Court itself, insomuch as those persons were acting in direct violation of court findings, Federal court policy, Federal statute, and the intentions and aims which constitute final settlement of signatories under the Shakman Consent Decree in denying Wzorek access to relevant tapes and or evidence in his case, responsibility for which ultimately falls under the direct supervision and oversight of this most Supreme judicial body, Your Honors.

4. Also occurring on 11 May, 1990, during Defendant's (City of Chicago et al) testimony in appeal, case # 89-1868 / #89-2988, then-Assistant U.S. Attorney Lawrence Rosenthal, representing and thus acting on behalf of Defendant, City of Chicago et al, did impugn himself and may have committed perjury and extrinsic fraud by pretending not to know of the content of

prior court recorded medical testimony in the case decisions under appeal (Wzorek v City of Chicago, #84-CV-9978) as regards Dr. Jan Fawcett's sworn expert testimony as medical witness, 01 and 02 November 1988, but also 16 August 1989); and that in so doing, City of Chicago acting Corporation Counsel Rosenthal did specifically and willfully materially misrepresent Defendant's responsibility within those same medical findings, as regards the nature, causation and illness suffered by Plaintiff and Petitioner, Eugene Wzorek, expert medical opinion of which was in fact (or at minimum, should have been) thrice duly recorded in prior sworn testimony, as given in open court by expert witness Dr. Jan Fawcett [attachment C, Transcript 16 August 1989; also attachment A, item 90, 08/01/88, stating "The Court appoints Dr. Jan Fawcett has [sic] its expert."];

Further, Wzorek contends that in so doing, Defendant's acting Corporation Counsel Rosenthal then during appeal in case # 89-1868 / #89-2988 "acted to obstruct justice" by means of concealing prior established court testimony by court appointed expert witness, Dr. Jan Fawcett, in case #84-CV-9978 (toward which appeals 89-1868 and 89-2988 were directed and attached), and that through this means, Defendant's acting counsel Rosenthal may have committed extrinsic Fraud Upon the Court, on the behalf of or at the direct or indirect request or instruction of Defendant, City of Chicago et al, by withholding vital evidence regarding critical prior medical testimony which had already been heard and weighed upon by Judge Brian Barnett Duff in Northern District Court Illinois E.D.; and that as such, without warrant, cause or jurisdiction, Defendant's acting Corporation Counsel Rosenthal did willfully and unlawfully attempt to overturn or delay a prior and medically urgent equitable decision in #84-CV-9978, that of the presiding justice in that case (see Judge Duff's decisions, attachment B,

708 F. Supp. 954, Eugene Wzorek v. City of Chicago, No. 84-CV-9978, 21 March 1989; also attachment E, 718 F. Supp. 1386, Wzorek v. City of Chicago et al, #84-CV-9978, 06 September 1989).

**[Footnote: Attorney Rosenthal's Actions as Part of Defendant's Continuation of Similar Obfuscations]**

[In sidebar to item 4 above, AVAILABLE medical evidence spoken of, sworn testimony by Dr. Jan Fawcett, 16 August 1989, was in fact hidden from the official transcripts of that date in #89-CV-9978 for a period of several years; while a transcript of Dr. Fawcett's medical testimony now finally "exists", Petitioner Eugene Wzorek has full evidence of this "ancillary," accompanying fraud and criminal manipulation of the transcript record itself, complete with multiple signatures (aka, "forgeries") and carrying various dates and or case numbers, on multiple court-stamped, court supplied, completely disparate "versions" of the "official transcript" of 16 August 1989; the full effect of which not coincidentally benefitted acting City of Chicago Corporation Counsel Lawrence Rosenthal and Defendant, City of Chicago et al, as aiding and abetting in this attempt at committing Fraud Upon the Court, via direct omission and or manipulation of Court established facts and the court-appointed expert witness testimony of Dr. Jan Fawcett, as has already been established in record herein;

[Therefore Petitioner, Plaintiff and sufferer Eugene Wzorek stands prepared to present this physical evidence, in the form of three DISTINCT, separate "versions" of the "final prepared document" of 16 August 1989 transcript in open court, for the immediate inspection and full attention of these Most Honorable assembled Justices;

[While these physical transcripts, and other evidence of fraud, malfeasance and mis-dealing have been cited in prior pleadings, neither Northern District Illinois E.D. nor the USCOA Seventh Circuit has ever allowed presentation of the physical evidence (actual physical copies, as described) in support of these allegations;

[Thus Petitioner, Eugene Wzorek, having been denied the opportunity to present substantiating physical evidence in court as regards various and numerous motions citing specifics of the same, has been denied justice by way of further, continuing and ongoing violations of Plaintiff Eugene Wzorek's First Amendment rights, rendering further pleadings on the part of Petitioner (Eugene Wzorek) on these matters within those specific venues as

“moot and compromised”;

[But also, in consideration of Plaintiff's proposed presentation of direct physical evidence of Fraud Upon the Court, any normally contiguous statutory considerations such as laches, res judica, time barring, etc, can thus be demonstrated to violate Petitioner Wzorek's Civil Rights in equity proceedings, since fraudulent concealment tolls any applicable statute of limitations, thus presenting a substantial risk and moral hazard to the credibility and standing of this great Court itself, should the condition of “denial of justice” for Plaintiff be allowed to continue to stand, or else otherwise be left to “forfeit” as remaining unaddressed by this most prestigious Body, The Supreme Court of the United States. ]

5. Yet further, and according to signed clerk's receipt, U.S. Court of Appeals Withdrawal Slip as record for the Seventh Circuit, acting City of Chicago Corporation Counsel Lawrence Rosenthal removed the master audio tape recording for case hearing recorded 11 May 1990, Seventh Circuit Appellate # 89-1868 / #89-2988 from the court records / evidence repository on or about 26 June 1990 (attachment G, Record Withdrawal Slip, United States Court of Appeals for the Seventh Circuit, signed by Attorney Lawrence Rosenthal, dated 26 June 1990, date stamped “Jul 18 1990”); and while at that time [and thus for the record] occurring under Rule 11(e), in it's current context then the ongoing refusal of Attorney Rosenthal to replace said recorded audio tape evidence back into Court record stands in clear defiance of Rule 11(e) of the Illinois Code of Civil Procedure and Rules of Court, Smith-Hurd Annotated Statutes, Federal Court Rules, U.S. Court of Appeals for the Seventh Circuit, U.S. District Courts of Illinois, Chapters 110 (Practice) and 110A (Practice Rules), active August 12, 1987, which was in full effect when Defendant's acting Corporation Counsel Rosenthal did physically remove this master court audio recording (attachment H, Rule 11(e), as published).

6. Plaintiff hereby cites acting Corporation Counsel Lawrence Rosenthal's removal of master audio tape

/ Court Record from the record in appellate hearings in USCOA Seventh Circuit cases #89-1868 / #89-2988; and thus Defendant's removal of permanent records from the case file; as gross violations of Plaintiff Eugene Wzorek's right to a fair trial;

But also, Wzorek cites acting Defendant's Corporation Counsel Rosenthal's complicity in "covering his own (attorney Rosenthal's) tracks" of grievous, damaging and potentially damning omissions of record - as regards prior Court testimony and findings, court orders, court opinion, expert witness testimony, and matters previously heard and decided in equity - regarding earlier court proceedings, as being aided and abetted in whole or part by this very act of acting Corporation Counsel Rosenthal's direct removal of the master court audio recordings from court record, as directly pertains to the case of record, #84-CV-9978;

And that these actions on part of Defendant's counsel Rosenthal constitute direct evidence of longstanding and continuing wrongdoing, with grievous harm to Plaintiff, Petitioner and sufferer, Eugene Wzorek;

But also in and of themselves, constitute separate and ongoing violations of the aims and intent of the Shakman Consent Decree, as to have occurred against Plaintiff, Petitioner and sufferer Eugene Wzorek throughout this entire period of time (being unto the present day) at the hands of Defendant and Defendant's assigns, City of Chicago et al., after having lost the Shakman decision to Wzorek.

7. In subsequent hearing resulting in decision, 23 July 1992, Judge Duff denies Plaintiff Wzorek access to copies of the master audio recording tapes of Wzorek's own case [record of which is found in attachment J, "Motion for access...", # 84-CV-9978, accompanying transcript 23 July 1992, Judge Duff's specific reasoning found on transcript pg. 3, line 22 and continuing through pg. 4 line 2;]. In this decision, Justice Duff

ineptly compares the court's official audio tape record to a stenographer's "pencil" - while in direct contrast and comparison to an official court record existing in the form of a mechanical audio/voice tape recording (as per Judge Richard Posner, Seventh Circuit Federal District Appeals Court, *Smith v. U.S. District Court Officers*, 98-1423, 98-1548, 203 F.3d 440, 2000), then by an honest equivalency, the "stenographer's pencil" Duff speaks of exists as nothing more than a commodity, a physical writing instrument which neither conveys nor bears any critical or differential information in any case whatsoever.

8. On 3 July 1996, Seventh Circuit Appellate Court, again with Judge Easterbrook, accompanied by Justices Cummings and Ripple, in a case directly related to 84-CV-9978 but listed in appellate court as 95-CV-3470, USCOA Seventh Circuit further denies Petitioner Wzorek's appeal to obtain copies of the master audio tapes of these otherwise improper and fraudulently flawed proceedings (attachment J, records on file, as USCOA for the Seventh Circuit, case # 95-3470, Ordered as rehearing "DENIED", dated 3 July 1996, signed by Judges Cummings, Easterbrook and Ripple).

**[Responsibility of the Northern District Illinois E.D.,  
USCOA Seventh Circuit]**

[As sidebar to Items 7 and 8 above, while pending evidence of this Rule 11(e) violation on the part of Defendant's acting Corporation Counsel Lawrence Rosenthal has been cited in several prior pleadings, neither the Northern District Illinois E.D., nor the USCOA Seventh Circuit has ever allowed such evidence to be presented in court hearing, even while rendering decisions against Plaintiff Wzorek in these filings apparently as based purely in the court's own "speculation" regarding physical evidence at Plaintiff's hand;

[And thus, without presentation of physical records, these decisions themselves constitute further and ongoing violations of Petitioner Wzorek's Civil Rights, since both venues have seen fit to allow this condition (missing evidence of record) to stand



throughout this entire period without applying adequate and direct Court supervision or Court ordered inspection of records as requested by Plaintiff;

[Thus, it appears to Plaintiff Wzorek that not only the Northern District Illinois E.D., but also USCOA Seventh Circuit both now also stand in clear violation of the aims and intent of Rule 11(e), thus currently barring either of these entities from filing further motions, briefs, memoranda or opinions in this current case, Petition for Emergency Hearing: Writ of Certiorari, Eugene Wzorek v. City of Chicago et al, re #84-CV-9978. [attachment J], records on file with transcript, "Motion for access to tapes / Appeal denied" - decision in 84-CV-9978 by Judge Duff, 23 July 1992, with accompanying transcript; also accompanying USCOA Seventh Circuit case # 95-3470, Ordered as rehearing "DENIED", dated 3 July 1996, signed by Judges Cummings, Easterbrook and Ripple.]

9. In the instance of evidence presented herein regarding Defendant's appeal testimony, City of Chicago acting Corporation Counsel Rosenthal's active omission of vital evidence and expert testimony of Court record during court proceedings, in attempt at overturning or delaying a standing court order as per USCOA Seventh Circuit cases # 89-1868 / #89-2988, can be demonstrated to have resulted in that court's reversal of Plaintiff's Equitable Award for medically necessary care of up to \$150,000, critically supportive medical testimony of which was, prior to decision, thus hidden and obscured from public review or the possibility of court scrutiny by way of "missing" master audiotape recordings, specifically those recordings pertaining directly to Attorney Rosenthal's / Defendant's appearance and testimony in open court on 11 May 1990, as per #89-1868 / #89-2988;

For which, Defendant's acting Corporation Counsel Lawrence Rosenthal himself signed the audiotapes in question out of court record and into his own possession, by his own hand;

Thus, with acting Corporation Counsel Lawrence Rosenthal did remove potentially "incriminating" master audio tape recordings from Court record, and

with that record being in his possession on behalf of Defendant, City of Chicago et al, then:

As evidence in matters of continuing judicial record of the actions undertaken by Defendant's acting Corporation Counsel Lawrence Rosenthal's active removal and omission of vital evidence during any and all subsequent hearings (including Defendant's appeals), Defendant's ill intent is further alluded to by Justice Duff in subsequent status hearings for case #84-CV-9978 (attachment C, transcript 16 August 1989, Duff's notations as cover page), taking special notice of Judge Duff's comments in dismay regarding:

[1] Defendant, City of Chicago et al, as potentially omitting vital court determined evidence from its appeals hearing, pg. 4 line 20 through pg. 5 line 2, suggesting perjury and or obstruction of justice on the part of Defendant; and [2] pg. 5 lines 1 and 2, wherein Judge Duff cites Defendant, City of Chicago et al, as having caused the problem of direct interference in this case by way of a court official (as evidence would cite, Defendant's acting Corporation Counsel Lawrence Rosenthal, but also potentially others) in the execution of an otherwise equitable final decision and award for Plaintiff's medically necessary care, as based on a substantial misrepresentation of known and court-established facts during later proceedings in appellate venue, again suggesting Defendant may have perjured themselves or otherwise obscured and or misrepresented vital medical testimony in USCOA Seventh Circuit during appeals proceedings.

10. As of the above evidence, the only logical conclusion available to Petitioner is that Defendant's acting Corporation Counsel Rosenthal, then later USCOA Seventh Circuit, and eventually even Northern District Illinois E.D., all variously "blamed" and defamed Plaintiff Wzorek, intentionally or otherwise; and did so by ultimately accomplishing a convoluted denial

of the very evidence of record and wrongdoing which is required to remedy the situation (to the task of which Petitioner and Plaintiff Wzorek stands ready);

And with these injustices occurring via missing / occluded / barred / obscured or hidden ("unavailable") court evidence of record, which in the instance of acting Corporation Counsel Rosenthal being removed at the hand of Defendant's (City of Chicago et al) acting Corporation Counsel himself; then, even as the Court later denies Petitioner Eugene Wzorek access to a copy of the official recorded audio tape of proceedings from 11 May 1990 (which has now apparently been in possession of acting Corporation Counsel Lawrence Rosenthal up to the present day without return to the court record), but also other tapes, this in direct defiance of Rule 11(e);

And being that the collective result of these actions has aided in the formulation of faulty and or potentially fraudulent, spoiled judgements during this intervening period (each pivoting around missing or "inadmissible" evidence of record as being denied to be produced in court by Plaintiff / Plaintiff's counsel in physical demonstration of the claims made thereof); even as said evidence requested, master audio recording tape of 11 May 1990, was missing from the Court's record;

Then by law and Seventh Circuit Rule 11(e), all case decisions contrary to Petitioner's pleadings which are directly relevant to the intentionally removed and or missing vital evidence of record must be vacated, granting Summary Judgement to Plaintiff, since Defendant (City of Chicago et al) is barred from any further filings with this Court until such a time as those vital records have been returned and secured to court holdings.

[Footnote: Rule 11(e) is very specific on this matter, as a punitive injunction against any form of official removal and or ma-

nipulation of crucial court records, evidence and holdings of proceedings; attachment H, Rule 11(e) as published.]

### **Further Citations**

To this current date, there exists no record for return of 11 May 1990's master audio tape to the Court by Defendant's acting Corporation Counsel Rosenthal as per #89-1868 / #89-2988 (attachment K, George Schuch, "records request made in person", notarized affidavit and signed delivery receipts). Such request was recently made on behalf of Plaintiff by Mr. George Schuch at Chicago NARA records repository, 7358 South Pulaski Road, Chicago, Illinois on 04 June 2018; noting absence of vital records, Mr. Schuch took photographs of the file as it exists, noting omissions in a notarized Affidavit, copies of which were furnished NARA and USCOA Seventh Circuit, herein provided with USPS delivery notification receipts attached (attachment K, George Schuch, "records request made in person", notarized affidavit and signed delivery receipts).

It is also of vital importance in #84-CV-9978 (but also USCOA Seventh Circuit #89-1868 / #89-2988) to note that per Rule 11(e), then USCOA Seventh Circuit did inadvertently issue its ruling in this case while this vital evidence of record was missing from the case file.

Thus, by published Illinois Code of Civil Procedure and Rules of Court, August 12, 1987, Chapters 110 (Practice) and 110A (Practice Rules), Rule 11(e), this action of removal of the master audio tape transcript recording by Defendant's acting Corporation Counsel Rosenthal bars Defendant, City of Chicago et al, from filing any further motions with the Court until such time as missing evidence is returned to Court custody, which by record does not appear to have happened since it's removal, citing signed removal date 26 June 1990, evidence of record now having been absent

from the Court's file unto the date of this filing (attachment G, Record Withdrawal Slip, United States Court of Appeals for the Seventh Circuit, signed by Attorney Lawrence Rosenthal, dated 26 June 1990, date stamped "Jul 18 1990"; also attachment H, Rule 11(e) as published).

Thus, it is this Court's sworn duty as per Seventh Circuit Appellate Rule 11(e), Illinois Code of Civil Procedure and Rules of Court, August 12, 1987, to bar Defendant, City of Chicago et al, from any subsequent filing until the physical return of said Court Property of Record (attachment H, Rule 11(e) as published), to apply adequate and appropriate sanction against the actions of Defendant and it's acting Corporation Counsel, Attorney Lawrence Rosenthal, but also potentially against others, the actions of whom according to Court's published rules must by law result in summary judgement for Plaintiff, Petitioner and sufferer, Eugene Wzorek, in each of the following affected cases:

a) USCOA Seventh Circuit cases #89-1868 / #89-2988, which as being ruled upon by the Court while vital Evidence of Record was missing (as having been withdrawn by Defendant's Corporation Counsel approximately 17 days prior to decision), presents a decision which must be vacated and or overturned immediately;

b) The same result of which [Defendants being barred from further filing with the Court until such time as Evidence of Record is returned to the Court, per Rule 11(e)] thus vacates later dismissals of both Northern District Illinois E.D., Justice Duff, 23 July 1992, decision in 84-CV-9978 (attachment J, "Motion for access...", Duff decision with accompanying transcript of 23 July, 1992), resulting in Summary Judgement for Plaintiff;

c) And also Seventh Circuit Court of Appeals #95-

CV-3470, directly relevant to #84-CV-9978, decision of 3 July 1996 (attachment J, records on file, as US-COA for the Seventh Circuit, decision in case # 95-3470, Ordered as rehearing “DENIED”, dated 3 July 1996, signed by Judges Cummings, Easterbrook and Ripple), again resulting in Summary Judgement for Plaintiff;

d) But also 117 S.Ct. 710, Eugene Wzorek v. City of Chicago, case #96-6803, 06 January 1997 (attachment L, 117 S.Ct. 710, Eugene Wzorek v City of Chicago, #96-6803, 06 January 1997), since denial was based in these “flawed” but also potentially “barred” decisions in the lower courts;

e) And more recently, 05-CV-4141 (attachment P), resulting in Summary Judgement for Plaintiff;

Then, as citing Rule 11(e) regarding the handling and possession of official court records, the lack of which has apparently prejudiced the lower courts against Plaintiff, Petitioner and sufferer Eugene Wzorek by failing to provide or preserve vital court evidence, condition of which has placed Plaintiff Eugene Wzorek in a disagreeable, disadvantaged, irreconcilable and untenable position regarding further filings in attempt to restore Plaintiff's original equitable decisions and orders;

Then as required by law, as by published court procedure, with Defendant (City of Chicago et al) and Defendant's Corporation Counsel holding in direct violation of Seventh Circuit Civil Code, via Rule 11(e);

And also by law, since permanent or semi-permanent removal of a vital court record of proceeding (the master audio recording) eclipses any resemblance of “time barring,” laches, res judica, etc, and thus precludes any available or reasonable due process for Plaintiff, Eugene Wzorek, resulting in ongoing violation and loss of Due Process, as accompanying a profound and

persistent denial of Plaintiff's Civil Rights;

Then Plaintiff, Petitioner and sufferer Wzorek cites that since vital case evidence remains and thus has been missing since approximately 26 June 1990, fully several weeks prior to USCOA Seventh Circuit's decision in that case itself;

Then Defendant (City of Chicago et al) and acting Corporation Counsel Lawrence Rosenthal, but also others acting on behalf as corporation counsel for Defendant, are by rule and law barred from further filings with this Court under Rule 11(e), from the date of 26 June 1990, carrying forward unto the date of this filing, citing outstanding and continuing violation of Rule 11(e) by Defendant, and or lack of compliance in allowing for the presentation of physical evidence in subsequent proceedings which may have corrected this violation, resulting in flawed renderings and decisions against Plaintiff Wzorek, whom has incurred numerous and un-tolled damages as direct result;

And citing that Rule 11(e) specifically prevents any Answer ("motion" or pleading) whatsoever on the part of Defendant to Petitioner or this Court; then in this instance and as specifically per Plaintiff Wzorek's Petition for Emergency Hearing: Writ of Certiorari regarding these present, pressing and most urgent matters as set before the Court;

And with outstanding decisions against Plaintiff, Eugene Wzorek, that currently stand as presenting by themselves continuing and further violations of Rule 11(e); but also as standing in gross violation of the principle of trial by record, when as a fact decisions of the lower courts have to date refused to allow presentation of physical evidence in Plaintiff's various, prior motions supporting fraud, missing or altered records, Rule 11(e), or decisions resulting in denial of simple procurement of copies of master court audiotape recordings, which unlike written transcripts according

to USCOA Seventh Circuit Justice Richard Posner remain an original record of the case, regarding any question or dispute of facts and or testimony;

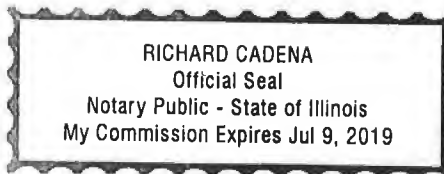
And citing that in any case, Defendant's Fraudulent Concealment (of Dr. Jan Fawcett's expert witness testimony, but also Defendant's acting counsel Rosenthal's records removal and other matters) tolls any applicable statute of limitations;

Then also Northern District Illinois E.D., and USCOA Seventh Circuit courts are by Rule 11(e) [attachment H, Rule 11(e)] similarly barred from further filing in this present Petition, until such a time as requested missing vital records are returned to and present in the Court's record, and that (should it happen) will require the collective efforts and decision of the Justices of this Most Esteemed Court, Your Honors;

As by the true hand of Justice being delivered unto the bosom of this Court in this most urgent pleading and Petition for Emergency Hearing: Writ of Certiorari as presented to Your Honors, Petitioner Eugene Wzorek seeks to be made whole again in the law, by Your Honors' grace.

Representing pro se,

Eugene Wzorek this 16 day of July, 2018  
Eugene Wzorek  
4344 S. Honore Street  
Chicago, Illinois 60609  
773-254-3582



In Witness hereof,

Richard Cadena 07/09/2019  
Name commission



## **Appendix A**

AS PUBLISHED.

US Court of Appeals for the Seventh Circuit,  
906 - F2D - 1180, case nos. 89-1868, 89 - 2988.

Eugene Wzorek, Petitioner - Appellee,

v.

CITY OF CHICAGO,  
a Municipal Corporation,  
Respondent - Appellant

Argued 11 May 1990  
Decision, filed 13 July 1990

Record of which comprises  
the following nine (9) pages.

United States Court of Appeals,  
Seventh Circuit.

Eugene WZOREK, Petitioner–Appellee,  
v.  
CITY OF CHICAGO, a Municipal Corporation, Respondent–Appellant.

Nos. 89–1868, 89–2988.

Argued May 11, 1990. Decided July 13, 1990.

Terminated employee sued city. The United States District Court for the Northern District of Illinois, Eastern Division, Brian Barnett Duff, J., held the city in civil contempt, finding that the employee's discharge violated a decree seeking to limit the effects of political patronage in the treatment of city employees. Following orders awarding relief to employee, 708 F.Supp. 954 and 718 F.Supp. 1386, city appealed. The Court of Appeals, Cummings, Circuit Judge, held that: (1) city could be held liable for the impermissible political motivations of its "middle managers," and (2) employee was not entitled to recover damages for medical expenses and mental distress. Affirmed in part, and reversed in part.

### West Headnotes (3)Collapse West Headnotes

[Change View](#)

[1 Contempt](#)

#### Persons liable

Under decree seeking to limit effects of political patronage in treatment of Chicago employees, city could be held liable, in civil contempt action, for impermissible political motivations of its "middle managers" which violated terms of decree, even assuming its top supervisors were unaware of motivations.

[3 Cases that cite this headnote](#)



[93 Contempt](#)

[93 Acts or Conduct Constituting Contempt of Court](#)

[93k29 Persons liable](#)

[2 Interest](#)



Labor relations and employment

Municipal Corporations



Compensation after discharge, suspension, or retirement

Discharge of City truck driver for involvement in municipal partisan politics violated consent decree and required the City to pay him back pay, prejudgment interest, and medical prescription expenses.

3 Cases that cite this headnote



219Interest

219Time and Computation

219k39Time from Which Interest Runs in General

219k39(2.5)Prejudgment Interest in General

219k39(2.40)Labor relations and employment



268Municipal Corporations

268VOfficers, Agents, and Employees

268V(C)Agents and Employees

268k220Compensation

268k220(6)Compensation after discharge, suspension, or retirement

3Courts



Previous Decisions in Same Case as Law of the Case

Doctrine of law of case prevents reconsideration of decision barring unusual circumstances or compelling reason.

8 Cases that cite this headnote



106Courts

106Establishment, Organization, and Procedure

106Rules of Decision

106k99Previous Decisions in Same Case as Law of the Case

106k99(1)In general

(Formerly 228k99(1))

## **Attorneys and Law Firms**

\*1180 John L. Gubbins, Linda Friedman, Gubbins & Associates, Mark LeFevour, Chicago, Ill., and Terrance Mitchell, Homewood, Ill., for plaintiff-appellee. Lawrence Rosenthal, Asst. U.S. Atty., Arthur N. Christie, Mary L. Smith, James D. Montgomery, Corp. Counsel, Kelly R. Welsh, Asst. Corp. Counsel, and Ruth M. Moscovitch, Asst. Corp. Counsel, Appeals Div., Jonathan P. Siner, Mardell Nereim, Office of the Corp. Counsel, and Donald Hubert, Chicago, Ill., for defendant-appellant. Before CUMMINGS, EASTERBROOK and RIPPLE, Circuit Judges.

## Opinion

CUMMINGS, Circuit Judge.

The City of Chicago (the "City") appeals from two orders of the district court involving a finding of civil contempt against the City under the so-called *Shakman* decree, which seeks to limit the effects of political patronage in the treatment of City employees. See *Shakman v. Democratic Org. of Cook County*, 481 F.Supp. 1315, 1356–1359 (N.D.Ill.1979), reversed in part *sub nom. Shakman v. Dunne*, 829 F.2d 1387 (7th Cir.1987), certiorari denied, 484 U.S. 1065, 108 S.Ct. 1026, 98 L.Ed.2d 991.

The first order (appealed in our case No. 89–1868) is dated April 27, 1989. It requires the City to pay petitioner Eugene Wzorek \$145,160.68 in back pay, prejudgment interest, and medical and prescription expenses as compensation for terminating Wzorek as a City truck driver because of his involvement in municipal partisan politics. The second order under appeal (our No. 89–2988) is dated September 6, 1989. \*1181 In it, the court: (1) denied petitioner's reinstatement to his city job on the ground that he was still emotionally incapable of returning to work; (2) increased the amount of back pay by \$14,500, plus \$362.50 prejudgment interest; (3) added front pay for one year (with a present value of \$33,518.17) in lieu of reinstatement; and (4) ordered the City to provide for petitioner's psychiatric treatment for two years at a cost not to exceed \$150,000. See *Wzorek v. City of Chicago*, 708 F.Supp. 954 (N.D.Ill.1989).

The City argues that the petitioner failed to prove that those City officials with authority to terminate him acted for political reasons and also that the award for psychiatric care was in error. The relief ordered by the district court in its April 27, 1989, order, as supplemented in its September 6, 1989, order, is affirmed except with respect to payment for Wzorek's psychiatric treatment for the next two years. *Wzorek v. City of Chicago*, 718 F.Supp. 1386 (N.D.Ill.1989).

I.

A.

In the main, the City does not attempt to meet the heavy burden under Fed.R.Civ.Proc. 52(a) of proving that the district court's factual findings were clearly erroneous. Instead, the City primarily argues that, even under the facts found by the district court, the City cannot be held liable for the

impermissible political motivations of its "middle managers" which violate the terms of the *Shakman* decree if its top supervisors were unaware of those motivations.

Petitioner Wzorek, now 45, was employed by the City of Chicago's Department of Sewers as a probationary truck driver. During his city employment, Wzorek was a resident of the 12th Ward on Chicago's southwest side, where he supported the campaign of the present Mayor Richard M. Daley, financially and otherwise, in Daley's unsuccessful 1983 mayoral primary campaign. Harold Washington won the primary election.

While a probationary employee, Wzorek received an estimable 85 out of 100 performance rating. During the crucial period of Wzorek's employment, Eugene Barnes was the City's Acting Commissioner of the Department of Sewers. William Sommerford, the General Superintendent of the Cleaning Division for the Department of Sewers, and Ned Madia, a foreman of the Cleaning Division, were supervisors of Wzorek. Sommerford and Madia were hostile to the Daley 1983 mayoral primary campaign. After discovering that the petitioner had contributed money to the Daley campaign, Sommerford told the petitioner not to contribute again because he could get into trouble later down the line, and that Wzorek better hope the right candidate was going to win the primary. Petitioner was required to remove his Daley button and bumper stickers while others were permitted to wear their rival Jane Byrne and Harold Washington buttons. Sommerford also told Wzorek to pay his dues to the 12th Ward Regular Democratic Organization and that the restrictions of the *Shakman* decree could be avoided. Madia criticized Richard M. Daley and stated that Wzorek "better shape up" and pay 12th Ward dues.

When Eugene Barnes became Acting Commissioner of the Department of Sewers under Mayor Washington he told his supervisors that he was not going to make the 800 employees of that department into discharge-proof career service personnel. Barnes noted that the 27th Ward had supported Jane Byrne in the primary election. Under Barnes, 57 Department of Sewers probationary employees were discharged, including 29 from the 27th Ward. Barnes also allowed the petitioner to be fired as an unsatisfactory employee upon the recommendation of Sommerford. Although Sommerford later testified that petitioner was a good employee, on June 29, 1984, Barnes wrote to Dr. Charles Pounian, Commissioner of Personnel, that Barnes intended to discharge petitioner for poor work performance, the excuse also given by Sommerford. Consequently, on July 6, Pounian wrote petitioner that he had been discharged for that reason.

\*1182 The district judge found that Wzorek's political activities were a motivating factor in his discharge. He noted that petitioner's three supervisors wanted to discharge petitioner for his unsympathetic political activities and therefore had recommended that Barnes fire him.

**B.**

A bench trial on liability was held during four days in June and July 1988 and the damages issue was heard in November 1988. On March 21, 1989, the district court awarded the petitioner damages in

the amount of \$145,160.68. Wzorek v. City of Chicago, 708 F.Supp. 954 (N.D.Ill.1989) (back pay of \$132,825.33, plus prejudgment interest of \$13,833.35 and \$4,620 in medical expenses and prescriptions; offset by \$6,118 in unemployment compensation payments made by the State of Illinois to the petitioner and refunded to the State by the City). However, the court reserved ruling on whether the petitioner should be reinstated to his job in the future and did not specify the dollar amount of the "front pay and benefits" that might be awarded if reinstatement was not appropriate. The court stated that it would treat Wzorek's request for reinstatement in supplemental proceedings "within a reasonable time after November 1, 1989." Id. at 961. The City did not appeal from the March 21 judgment. On April 27, 1989, the district judge directed the City to pay the March 21 judgment by May 1, 1989. This time the City did appeal.

The City filed an emergency motion to stay the April 27 order. The petitioner asserted that this Court lacked jurisdiction to consider the appeal, contending that the March 21, 1989, judgment was final and that the time in which to file an appeal from that judgment had run. This Court subsequently decided that the March 21, 1989, order was not final and that this Court has jurisdiction to review the April 27, 1989, non-final order under the collateral-order doctrine of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546-547, 69 S.Ct. 1221, 1225-1226, 93 L.Ed. 1528; Palmer v. City of Chicago, 806 F.2d 1316, 1318-1320 (7th Cir.1987), certiorari denied, 481 U.S. 1049, 107 S.Ct. 2180, 95 L.Ed.2d 836. We adhere to that ruling.

In July 1989, the petitioner requested a hearing on his possible reinstatement to his City job. A hearing was held on that subject on August 16. On September 6, 1989, the district court issued the findings and conclusions of law supporting the order described above. Wzorek v. City of Chicago, 718 F.Supp. 1386 (N.D.Ill.1989).

### C.

Debate will undoubtedly continue regarding the wisdom of judicial restrictions on patronage. Compare R.F. Nagle, Constitutional Cultures: The Mentality and Consequences of Judicial Review 10, 37 & n. 71 (1989) with Laycock, "Notes on the Role of Judicial Review, the Expansion of Federal Power, and the Structure of Constitutional Rights," 99 Yale L.J. 1711, 1722-1724 (1990). Yet a majority of the Supreme Court has reaffirmed the vitality of the Court's line of cases holding that judicial restrictions may be placed upon "spoils systems" that violate the First Amendment. Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S.Ct. 2729, 111 L.Ed.2d 52 (1990).

In any case, the City asserts that it does not take issue with the anti-patronage case law and that it now respects the *Shakman* decree. Nor does the City argue that political affiliation could be considered relevant in any way to the petitioner's City job. See *Rutan*, 110 S.Ct. at — n. 5 (Stevens, J., concurring). The City argues instead that it cannot be held vicariously liable for the actions of maverick middle managers taking politically motivated actions on their own because it

never consented to assume such liability. To understand that claim a brief overview of the history of the extensive *Shakman* litigation is necessary.

In 1969, an independent candidate running as a delegate to the Illinois Constitutional Convention and one of his supporters filed a class action suit under 42 U.S.C. §§ 1983, 1985, 1986, and 1988 against various public and private bodies, including the City and its Mayor, alleging deprivations of \*1183 freedom of speech and association, and violations of due process and equal protection of the law. *Shakman v. Democratic Org. of Cook Co.*, 310 F.Supp. 1398 (N.D.Ill.1969). The plaintiffs alleged that the local Democratic Party, working in conjunction with patronage schemes in place within the City and Cook County (the "County") governments, had used governmental power and public funds to create a system of rewards and punishments that effectively stifled speech, freedom of association, and independent political activity on the part of City and County employees. The plaintiffs alleged that this patronage system violated constitutional and other rights of political candidates, voters, taxpayers, and city workers. The district court dismissed the suit, ruling in part that the plaintiffs lacked standing to allege the harm done to patronage employees. *Id.* at 1402.

This Court reversed upon reasoning not directly relevant to these appeals and remanded the case for further proceedings. *Shakman v. Democratic Org. of Cook Co.*, 435 F.2d 267 (1970). After the Supreme Court denied certiorari, 402 U.S. 909, 91 S.Ct. 1383, 28 L.Ed.2d 650, the plaintiffs entered into a consent decree with the defendants in 1971, the text of which may be found in *Shakman v. Democratic Org. of Cook Co.*, 481 F.Supp. 1315, 1356-1359 (N.D.Ill.1979). On May 5, 1972, the district court approved the consent decree as a settlement under Rule 23(e) of the Federal Rules of Civil Procedure. The decree established municipal liability through various provisions, including one which enjoins the City "from directly or indirectly, in whole or in part: (1) conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor." 481 F.Supp. at 1358 (¶ E). The decree is binding upon "the present and future officers, members, agents, servants, employees and attorneys of" the City. *Id.* at 1358 (¶ C(44)).

In 1976, this Court affirmed a finding of civil contempt against the City and the City's then Director of Administration of the Department of Streets and Sanitation, Michael Cardilli, for violating ¶ E of the decree quoted above by requiring city employees to circulate petitions for the candidacy of then Mayor Richard J. Daley. *Shakman v. Democratic Org. of Cook Co.*, 533 F.2d 344 (hereinafter *Cardilli*), certiorari denied, 429 U.S. 858, 97 S.Ct. 156, 50 L.Ed.2d 135. On the issue most relevant to these consolidated appeals, the City argued that it could not be held in contempt "because Cardilli's [politically motivated] conduct was clearly outside the scope of his employment." *Id.* at 352. The Court disagreed, holding that Cardilli's actions were within the scope of his employment. Therefore the plaintiffs were not required to show that supervisory employees were authorized to undertake political functions on the job. *Id.* at 352-353.

## II.

### A.

1 Here clear and convincing evidence shows that the reason for Wzorek's discharge was that he was a Richard M. Daley loyalist rather than a supporter of then Mayor Byrne or future Mayor Washington. His failure to pay his 12th Ward dues was another factor held against him. The district court was not clearly erroneous in finding that the supposedly poor work record compiled by Wzorek was a pretext for his firing.

In rejecting the City's argument that it should not be held liable for the actions of lower-level supervisors, the district court cited Oxman v. WLS-TV, 846 F.2d 448 (7th Cir.1988). That case involved a claim under the federal Age Discrimination in Employment Act, 29 U.S.C. §§ 621 et seq., in which the defendant employer claimed that the wrongful termination of the plaintiff based upon his age could not be imputed to the supervisor who actually made the decision to fire the plaintiff. This Court held that it was "reasonable," based on the facts in the record of that case, to infer that the improper reasons found to have motivated a lower-level supervisor in recommending termination of the plaintiff "1184 were shared by the supervisor who actually terminated the plaintiff. Id. at 456-457. This holding in Oxman is not an application of respondeat superior principles. Instead it is a rule governing permissible inferences in allegedly pretextual terminations for illegitimate reasons. Such an inference is not available in this case. The district court specifically found that Barnes was "misinformed" as to the true grounds for Wzorek's termination, Wzorek, 708 F.Supp. at 959-960, and the petitioner has not shown that the court's finding was clearly erroneous.

Nevertheless the City's argument that it is not liable for its agents' breaches of the Shakman decree is foreclosed by the holding discussed above. Cardilli, 533 F.2d at 352-353. The Court not only called the contrary argument "patently frivolous," but it put the City on notice that it was under an obligation to police its employees, lest the door be opened "for wholesale disobedience of the Court." Id. at 353 n. 13 (quoting Singer Mfg. Co. v. Sun Vacuum Stores, Inc., 192 F.Supp. 738, 741 (D.N.J.1961)). Penalties for civil contempt here are intended to coerce the City's managers and supervisors into taking the concrete steps necessary to prevent all of those with supervisory responsibilities from violating the decree. Blind faith in middle managers will not do.

There is no doctrine of respondeat superior under 42 U.S.C § 1983. Riordan v. Kempiners, 831 F.2d 690, 695 (7th Cir.1987). That is irrelevant, however, because this is a civil contempt action based upon a consent decree entered into well in advance of Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611, which gave birth to municipal liability under the civil rights statutes. At the time the City settled the Shakman case with the consent decree, municipalities could not be held liable at all as "persons" for purposes of § 1983. Monroe v. Pape, 365 U.S. 167, 187-192, 81 S.Ct. 473, 484-487, 5 L.Ed.2d 492. Therefore the only conceivable function of having the City bind itself was to be answerable for the deeds of its employees. There is



no reason to think that the City divined the compromise that was to come years later in *Monell*: cities become "persons," but are not vicariously liable.

Counsel for the City stated at oral argument in this appeal that the City made "an improvident concession" in 1976 in arguing the *Cardilli* case before this Court by admitting to respondeat superior liability. It is far more likely that the City, under intense pressure to resolve the *Shakman* litigation, made large concessions in 1971 that a new generation of City managers now wishes to take back. Nowhere in the *Shakman* decree is the City shielded from the acts of so-called "middle managers," an ill-defined group of supervisory workers who are outside the reach of the decree. The voluminous jurisprudential record of the *Shakman* litigation suggests instead that the extent of City liability has always been considered vast. See, e.g., *Shakman v. Democratic Org. of Cook Co.*, 569 F.Supp. 177, 184 (N.D.Ill.1983) (detailed implementation decree enforcing prohibition on patronage hiring) (judgment "applies to [City's and Mayor's] successors in office, to all of their agents and employees and to all others who receive notice of the Judgment and who are in active concert or participation with any of such persons.").

The consent decree binds the City to liability under respondeat superior analysis. In this case there can be no argument that the supervisors who had the petitioner fired for his political activity acted outside the scope of their employment. The City's managers must assume responsibility for the politically motivated actions of employees which violate the decree. That may not be a simple task within a municipal government of 40,000 employees, but it is a task the City assumed by consenting to the decree.

**B.**

2 The case law fully supports an award of damages for a violation of the decree. *Hutto v. Finney*, 437 U.S. 678, 691, 98 S.Ct. 2565, 2573-2574, 57 L.Ed.2d 522 (civil contempt may be punished by a remedial fine, compensating party who won \*1185 injunction for the effects of noncompliance); *Connolly v. J.T. Ventures*, 851 F.2d 930, 933 (7th Cir.1988) (courts have broad discretion to fashion remedies tailored to harm while considering likely effects of alternative remedies). The City's only complaint involves the award for psychiatric damages. In compelling the City to pay up to \$150,000 for Wzorek's psychiatric treatment for the next two years, the district court reasoned that Wzorek's discharge triggered Wzorek's mental illness and made him unfit to obtain employment.

3 Before this case was assigned to Judge Duff, predecessor Judge Decker had stricken that part of Wzorek's petition requesting damages for medical expenses and mental distress. The doctrine of the law of the case prevents reconsideration of that decision barring "unusual circumstances or a compelling reason." *Parts and Electric Motors, Inc. v. Sterling Electric, Inc.*, 866 F.2d 228, 231 (7th Cir.1988), certiorari denied, 493 U.S. 847, 110 S.Ct. 141, 107 L.Ed.2d 100. There has been no showing that would make this doctrine inapplicable.

Law of the case does not prevent a reviewing court from examining the earlier decision. Cohen v. Bucci, 905 F.2d 1111, 1112 (7th Cir.1990). Numerous factors support Judge Decker's decision. First, Judge Duff in his September 1989 conclusions of law found that "it is not clear to what degree Wzorek's present [mental] condition is the result of the City's original violation." Wzorek, 718 F.Supp. at 1388. Second, the district court based the \$150,000 award for psychiatric care upon: (1) the petitioner's lack of resources and failure to seek public assistance or insurance coverage; and (2) the City's failure to pay the March 1989 order awarding Wzorek \$145,160.68 promptly instead of appealing therefrom. *Id.* However, this Court had stayed that order and the City's exercise of its right to appeal cannot be the basis for awarding Wzorek his psychiatric expenses for the ensuing two years. Since the City's conduct was never alleged to be deliberate and malicious, recovery for mental distress was not warranted. Thompson v. Johnson, 410 F.Supp. 633, 643 (E.D.Pa.1976), affirmed without published opinion, 556 F.2d 568 (3d Cir.1977). Third, the medical records show that Wzorek's physician did not even refer Wzorek to a psychiatrist until more than a year after discharge, thus weakening any inference that his condition was caused by the discharge, nor has he sought psychiatric care even though such care is obtainable without ability to pay. All of these reasons support Judge Decker's grant of the City's motion to strike this request for recovery.

III.

The order requiring the City to pay \$150,000 worth of petitioner's psychiatric bills is reversed. In all other respects, the April and September 1989 orders are affirmed.

## All Citations

906 F.2d 1180

End of Document

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**EVIDENCE as  
Attachments for:**

**Eugene Wzorek, Plaintiff  
v.  
City of Chicago,  
an Illinois Municipal Corporation,  
Defendant**

**#84-CV-9978**

Evidence as provided for  
Petition for Emergency Hearing:  
Writ of Certiorari

Prepared for the  
**Supreme Court of the United States**

Petitioner and Plaintiff,  
Eugene Wzorek  
representing pro se,  
filing in pauperis

## Table of Evidence, as Attachments: Wzorek v. City of Chicago et al

| <u>No.:</u> | <u>Detail, Description</u>   | <u>Begins page:</u>                                  |
|-------------|--|--|
| A           | Case Docket (see item numbers for specifics), with Pacer additions   | 003  |
| B           | 708 F. Supp. 954, March 21, 1989, 84-CV-9978   | 025  |
| C           | Transcript, 16 August 1989, 84-CV-9978, w/notes Duff, w/notes Fawcett  | 039  |
| D           | Guide to Judiciary Policy Vol. 6, Court Reptng, Chapter 1, Overview;<br>110 Purpose 120 Authority  | 127  |
| E           | 718 F. Supp 1385, Sept. 6, 1989, 84-CV-9978  | 129  |
| F           | Shakman Decision, # 69-CV-2145, 5 May 1972   | 137  |
| G           | Record Withdrawal Slip, Rosenthal  | 143  |
| H           | - <b>[error, marked: "G"]</b> Rule 11E (all doc n definition)  | 145  |
| J           | “Motion for Access to Tapes” (Duff) / USCOA Appeal denied<br>1. Case docket sheet, citing Duff denial<br>2. Transcript of Duff proceedings, 23 July 1992<br>3. USCOA 7 <sup>th</sup> Cir case 95-3470, as relates to Duff earlier denial   | 149<br>(150)<br>(151)<br>(155)                       |
| K           | George Schuch: 1. Notarized affidavit 13 June 2018<br>2. Photos, USPS return receipt postcards, signed and dated<br>3. images, Records Requests made in person,<br>K img 1:phys. archive box w request;<br>K img 2, Decision in 89-1868/89-2988;<br>K img 3, pink copy, signed Record Withdrawal Slip<br>4. For ref, 908 F.2d 1180, USCOA &th Circuit case 89-1868/89-2988 | 157<br>(160)<br><br>(161)<br>(162)<br>(163)<br>(164) |
| L           | 117 S.Ct. 710, #96-6803, 06 January 1997   | 173  |
| M           | Decker, decision – 05 November 1987, 1987 WL 19801<br>memorandum opinion and order   | 175  |
| N           | Transcript, 04 August 1989, w/notations Duff comments  | 181  |
| P.          | 05-CV-4141, copy of original filing minus attachments (for brevity)  | 193  |
| Q.          | 1. Writ of Certiorari application;<br>2. USCOA unpublised opinion (cited) in 95-3470;<br>3. US Reports Volume 519, with Wzorek listing (as denied)   | 207<br>(228)<br>(230)                                |

**Attachment A:**

case docket for  
#84-CV-9978,

with addendum (per Pacer listings)

| DISC | OFF | YR. | CONV. | N/S | O  | R  | \$ DEMAND       | MAN. NO. | COUNT | YR. NUMBER |
|------|-----|-----|-------|-----|----|----|-----------------|----------|-------|------------|
| 0752 | 01  | 84  | 9978  | 11  | 16 | 84 | 3               | 442      | 1     |            |
|      |     |     |       |     |    |    | Nearest \$1,000 | 17031    | 84    | 9978       |

PLAINTIFFS  
(P-1) WZOREK, EUGENE

DEFENDANTS  
(D-1) CITY OF CHICAGO, A Municipal Corporation

PROTECTIVE ORDER  
ENTERED 07/01/92

USCA NO. 89-2988  
USCA #1868

JUDGE DUFF (Reassigned 12/31/87)  
CAUSE  
(CITE THE U.S. CIVIL STATUTE UNDER WHICH THE CASE  
IS FILED AND WRITE A BRIEF STATEMENT OF CAUSE)  
28 USC 1331 and 1343(3) - CIVIL RIGHTS - JOBS

KS

| PLAINTIFF   | (P-1)                    | ATTORNEYS                                       | DEFENDANT |
|---|--------------------------|---|-----------|
| (A) <del>W/D order 04/12/88</del> <del>Harry A. Schroeder</del> | A- Gordon James Arnett   |   |           |
| <del>Larry L. Lambert</del>                                     | 5865 N. Lincoln, #12     |   |           |
| <del>STINESPRING, LAMBERT,</del>                                | Chicago, IL 60659        | (D-1)   |           |
| <del>SCHROEDER &amp; ASSOCIATES</del>                           | (312) 334-0400           | (A) Donald Hubert                               |           |
| <del>3608 Vollmer Rd.</del>                                     |                          | DONALD HUBERT & ASSOC.                          |           |
| <del>P.O. Box 26</del>  | (P-1) order 11/19/93     | 188 W. Randolph St.                             |           |
| <del>Flossmoor, Ill. 60423</del>                                | Thomas Arnett            | Chicago, IL 60601                               |           |
|   | 1507 E. 53rd Street #413 | 368-0213  |           |
|   | Chgo 60615 288-2924      |   |           |
| (P-1)   |                          | (Withdrawn 09/14/89)                            |           |
| A - Terrance Mitchell   | Order 03/23/88.          | (D-1) <del>A. Charles Ex</del> , 180 N. LaSalle | 60601     |
| 2052 Ridge Road   |                          | (B) James D. Montgomery                         | 744-1796  |
| Homewood, IL 60430  |                          | Corporation Counsel, City of Chicago            |           |
| 799-9100  |                          | 121 N. LaSalle St.                              |           |
|   |                          | Rm. 511   |           |
|   |                          | Chicago, IL 60602                               |           |
|   |                          | 744-6900  |           |
| (P-1)   |                          |   |           |
| <del>John L. Gubbins</del>                                      | (order 10/31/91)         | (C) Arthur N. Christie                          |           |
| <del>Linda Friedman</del>                                       | (Order 09/07/89)         | Mary L. Smith                                   |           |
| <del>JOHN L. GUBBINS &amp; ASSOCIATES, P.C.</del>               |                          | Jonathan Siner                                  |           |
| <del>53 W. Jackson Blvd. S-1250-542-S. Dearborn</del>           |                          | CORP. COUNSEL- City Of Chgo                     |           |
| * <del>Chgo. 60604-408-2000-#610, 60605-1522</del>              |                          | 121 N. LaSalle St., Room 610                    |           |
| (Order 07/20/88)  |                          | CHGO, IL 60602                                  |           |
| <del>Steven Chobot</del>  | (Order 07/21/88)         | 312/744-6754                                    |           |
|   |                          |   |           |
| (P-1)   |                          |   |           |
| * <del>Mary Stowell</del>                                       | (Order 11/02/88)         |   |           |
|   | (Order 09/07/89)         |   |           |

|          |         |       |          |        |       |
|----------|---------|-------|----------|--------|-------|
| SEARCHED | INDEXED | FILED | DATE     | FILED  | DATE  |
|          |         |       | 11/16/89 | 139396 | 60601 |

UNITED STATES DISTRICT COURT DOCKET

000004

84 CV 9978



| DATE     | NR. | PROCEEDINGS  |
|----------|-----|--|
| 11/19/84 | 1   | Filed 11/16/84 Complaint and 1 copy. (JS-5)  |
| 11/19/84 | 2   | Filed 11/16/84 Civil Cover Sheet.  |
| 11/19/84 | 3   | Filed 11/16/84 Appearance of Harry A. Schroeder and Jerry L. Lambert as attorneys for plaintiff, with affidavit re. Rule 39. KS  |
| 11/19/84 |     | Issued 11/16/84 Summons and 1 copy. KS   |
| 11/30/84 | 4   | Filed 11/29/84 Return of service of summons and complaint as to defendant by mail on 11/19/84. KS  |
| 12-11-84 | 5   | Filed 12-10-84: Appearances of Donald Hubert and James Montgomery as counsel for defendant. wp   |
| 12/19/84 | 6   | Filed 12/18/84 Defendant's Notice of Motion; Motion to Dismiss av  |
| 12/19/84 | 7   | Filed 12/18/84 Memorandum in support of respondent's motion to dismiss the petition for Rule to Show Cause; Exhibits attached eav  |
| 12/19/84 | 8   | Enter order dated 12/18/84 Plaintiff granted leave to file amended complaint. Plaintiff to respond to motion to dismiss petition for rule to show cause. January 8, 1985. Defendant to reply January 18, 1985. Ruling by mail March 11, 1985-J. DECKER Mailed notices 12/19/84 eav |
| 1/9/85   | 9   | Filed 1/8/85: Notice of filing.  |
| 1/9/85   | 10  | Filed 1/8/85: Memo in opposition to respondent's motion to dismiss the petition for rule to show cause. GV   |
| 1/24/85  | 11  | Filed 1/23/85 defendant's Notice of Filing with Clerk; Reply Memorandum in support of respondent's motion to dismiss the petition for Rule to show cause. ar   |
| 3/6/85   | 12  | Filed 3/5/85: Notice of filing.  |
| 3/6/85   | 13  | Filed 3/5/85: Motion for leave to file first amended petition,'  |
| 3/6/85   | 14  | Filed 3/5/85: First amended petition for rule to show cause.   |
| 3/6/85   | 15  | Enter order dated 3/5/85: Petitioner's motion for leave to file first amended petition is allowed. defendant to answer or otherwise plead by March 19, 1985. Status hearing set for May 2, 1985 at 10 Am. before Judge Decker.--Decker SJ No notices required. GV                  |
| 3-22-85  | 16  | Filed 3-21-85 affidavit of Eugene Wzorek PS  |
| 3-22-85  | 17  | Filed 3-21-85 notice of filing of City of Chicago; motion to dismiss; memorandum to dismiss the petition for rule to show cause; Exhibits A-F PS   |
| 3-22-85  | 18  | Enter order dated 3-21-85: Answer brief to motion due April 4, 1985. Reply to answer brief due April 11, 1985. Ruling on motion to dismiss set for June 27, 1985 by mail- Decker, J Mailed notices 3-22-85 PS  |
| 4/5/85   | 19  | FILED 4/3/85: Notice of filing   |
| 4/5/85   | 20  | FILED 4/3/85: Memorandum of law in opposition to respondent's motion to dismiss rm   |
| 4/12/85  | 21  | Filed 04/11/85: Defendant's Notice of Filing, /With Clerk Memorandum in Reply to Petitioner's Memorandum of Law in Opposition to Respondent's Motion to Dismiss. JC  |
| 5-3-85   | 22  | Enter order dated 5-2-85: Status hearing for May 2, 1985 stricken. Ruling by mail on pending motion June 27, 1985--Decker, J PS No notices required  |

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF     |     | DEFENDANT   | DOCKET NO. <u>84C9978</u>          |
|---------------|-----|---|------------------------------------|
| Eugene Wzorek |     | City of Chicago   | PAGE <u>2</u> OF <u>    </u> PAGES |
| DATE          | NR. | PROCEEDINGS   |                                    |
| 7-18-85       | 23  | Enter order dated 7-16-85: Defendant's motion to dismiss the first amended petition for rule to show cause is denied. The first amended petition contains sufficient allegations in paragraphs 11 through 14 to raise a triable issue as to whether plaintiff's discharge was politically motivated. Defendant is given twenty days in which to file its answer to the amended petition.--Decker, J.<br>Mld notices 7-18-85<br>kl |                                    |
| 11-5-85       | 24  | Filed 11-4-85 notice of motion of defendant; motion for withdrawal of appearance PS   |                                    |
| 11-5-85       | 25  | Enter order dated 11-4-85: Motion for withdrawal and substitution of attorneys on behalf of City of Chicago granted--Decker, J<br>Mailed notices 11-5-85<br>PS  |                                    |
| 12/4/85       | 26  | FILED 11/27/85: APPEARANCE of Arthur N. Christie, Mary L. Smith, Jonathan Siner as additional counsels for defendant, City of Chicago rm  |                                    |
| 1/3/86        | 27  | Enter order dated 1/2/86: Status hearing set for January 13, 1986 at 10:00 A.M. -- Decker, J<br>Mld. notices 1/3/86<br>is   |                                    |
| 1-14-86       | 28  | Enter order dated 1-13-86: Discovery to be complete March 13, 1986--Decker, J<br>Mailed notices 1-14-86<br>PS   |                                    |
| 03/14/86      | 29  | Minute order of 03/13/86: Status hearing held. Discovery extended for 45 days. Plaintiff is to be furnished copy of deposition transcript by court reporter in 20 days. Status hearing continued to May 15, 1986 at 10 A.M.--DECKER, SJ<br>amb<br>Mailed notices 03/14/86   |                                    |
| 05/16/86      | 30  | Minute Order of 05/15/86: Status hearing held. Plaintiff granted leave to amend complaint in seven days. Defendant 21 days to answer. Discovery and status hearing continued to July 1, 1986 at 10:00 a.m. --Decker, SJ.<br>etv<br>Mailed notices 05/16/86.   |                                    |
| 05/23/86      | 31  | Filed 05/22/86: Plaintiff's SECOND AMENDED PETITION for Rule to Show Cause.<br>JC   |                                    |
| 06/20/86      | 32  | Minute order of 06/19/86: Motion of respondent to strike portions of petitioner's second amended petition for rule to show cause granted. Time for respondent to answer remaining allegations extended to July 7, 1986. Decker, SJ<br>Mailed notices 06/20/86   |                                    |
|               | 33  | Filed 06/19/86: Notice of motion and Motion<br>tcm  |                                    |

--continued--

000006



CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF      |     | DEFENDANT  |  | DOCKET NO. <u>84C9978</u>          |
|----------------|-----|--|--|------------------------------------|
| WZOREK, EUGENE |     | CITY OF CHICAGO  |  | PAGE <u>3</u> OF <u>    </u> PAGES |
| DATE           | NR. | PROCEEDINGS  |  |                                    |
| 07/02/86       | 34  | Minute Order of 07/01/86: Status hearing held. Pretrial conference set for September 2, 1986 at 9:30 a.m. --Decker, SJ.  |  |                                    |
|                | 35  | No notices required.   |  |                                    |
| etv            |     | Filed 07/01/86: Notice of Filing; Respondent's ANSWER to Petitioner's Second Amended Petition for Rule to Show Cause   |  |                                    |
| 09/03/86       | 36  | Minute order of 09/02/86: Pretrial conference held. Discovery ordered to be complete on September 30, 1986. Defendant to file motion for summary judgment and supporting brief on or before September 30, 1986; plaintiff's responsive brief due October 20, 1986; and defendant's reply brief due October 30, 1986. Ruling date to be set after filing of reply brief. Decker, SJ |  |                                    |
| tcn            |     | Mailed notices 09/03/86  |  |                                    |
| 10/01/86       | 37  | Minute Order of 09/30/86: Respondent's motion to extend time for filing motion and memorandum for summary judgment to and including October 21, 1986 is granted. Plaintiff's responsive brief is due on or before October 14, 1986. Defendant's reply is due on or before October 23, 1986. Ruling will be made by mail. Filed motion. --Decker, SJ.                               |  |                                    |
|                |     | Mailed notices 10/01/86.   |  |                                    |
| etv            | 38  | Filed 09/30/86: Notice of Motion; Motion To Extend Time  |  |                                    |
| 10/02/86       | 39  | Minute Order of 10/01/86: The minute order of September 30, 1986 is amended to reflect that plaintiff's responsive brief as to defendant's motion for summary judgment is due on or before November 14, 1986. Defendant's reply is due on or before November 24, 1986. Ruling will be made by mail. --Decker, SJ.  |  |                                    |
| etv            |     | Mailed notices 10/02/86.   |  |                                    |
| 10/22/86       | 40  | Judgment.  |  |                                    |
|                | 41  | Filed 10/21/86: Defendant's Notice of Filing; Motion for Summary/  |  |                                    |
| JC             |     | Filed 10/21/86: Respondent's Statement of Material Facts as to Which There is No Genuine Issue to be Tried.  |  |                                    |
| 10/24/86       | 42  | Filed 10/22/86: Memo in support of respondent's motion for summary judgment  |  |                                    |
| GV             | 43  | Filed 10/22/86: Schedule of exhibits in support of motion for summary judgment; attachments.   |  |                                    |
| 11/18/86       | 44  | Filed 11/17/86: Notice of Filing.  |  |                                    |
|                | 45  | Filed 11/17/86: Plaintiff's Memorandum in Opposition to Respondent's Motion for Summary Judgment.  |  |                                    |
| JC             |     |  |  |                                    |
| 12/08/86       | 46  | Minute order of 12/05/86: Defendant is to reply to plaintiff's response to its motion for summary judgment on or before December 15, 1986. If no reply is filed, ruling will be made without reply brief. Decker, S.J.   |  |                                    |
| KS             |     | Mailed notices 12/08/86.   |  |                                    |
| 12/17/86       | 47  | Filed 12/15/86: Notice of filing; Memo in reply in support of defendant's motion for summary judgment.   |  |                                    |
| GV             |     |  |  |                                    |

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000007

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF      |     | DEFENDANT   | DOCKET NO. <u>84C9978</u>          |
|----------------|-----|---|------------------------------------|
| WZOREK, EUGENE |     | CITY OF CHICAGO   | PAGE <u>4</u> OF <u>    </u> PAGES |
| DATE           | NR. | PROCEEDINGS   |                                    |
| 11/06/87       | 48  | Minute order of 11/05/87: The City's motion for summary judgment is hereby denied. Memorandum opinion and order entered. (For further detail see order attached to the original minute order form.) Decker, SJ.   |                                    |
|                |     | Mailed notice 11/06/87.   |                                    |
| AMB            | 49  | Entered 11/05/87: Memorandum opinion and order.   |                                    |
| 12/31/87       | --  | Pursuant to order of the Executive Committee, cause is reassigned to the calendar of Judge Duff.  |                                    |
| 02/05/88       | 50  | Minute order of 02/05/88: Status hearing set for February 16, 1988 at 9:30 a.m. Counsel for plaintiff is directed to notify all other counsel of status date. Duff, J.  |                                    |
|                |     | Mailed notice 02/05/88.   |                                    |
| bgm            |     |   |                                    |
| 02/18/88       | 51  | Minute order of 02/16/88: Defendant's motion for leave to file motion to reconsider the order of November 5, 1987 is denied for the reasons stated in open court. Status hearing held; continued to 21 Mar 88 at 9:30 a.m. Duff, J.   |                                    |
|                |     | Mailed notice 02/18/88.   |                                    |
| AMB            |     |   |                                    |
| 03/23/88       | 52  | Minute order of 03/17/88: Plaintiff's motion for withdrawal and substitution of counsel is denied for the reasons stated in open court. Status hearing reset for 08 Apr 88 at 9:30a.m. Duff, J.   |                                    |
|                |     | Mailed notice 03/23/88.   |                                    |
|                | 53  | Filed 03/17/88: Notice of motion; Motion; Withdrawal and substitution of attorney.  |                                    |
|                | 54  | Filed 03/17/88: Appearance of Terrance Mitchell for the plaintiff.  |                                    |
| DMK            | 55  | Filed 03/17/88: Rule 39 affidavit of T. Mitchell.   |                                    |
| 04/12/88       | 56  | Minute order of 04/08/88: Oral motion for substitution of counsel for plaintiff granted with the conditions as stated by the Court. Joint final pretrial order to be submitted by May 17, 1988. Trial memoranda and proposed findings are to be submitted by May 17, 1988. Status hearing held. Pretrial conference set for May 19, 1988 at 4:00 p.m. Trial set for May 31, 1988 at 10:00 a.m. Duff, J. |                                    |
|                |     | Mailed notice 04/12/88.   |                                    |
|                | 57  | Filed 04/08/88: Rule 39 affidavit of Terrance Mitchell.   |                                    |
| tcm            | --  | Filed 04/08/88: CONTINGENCY FEE AGREEMENT (not in public case file).  |                                    |
| 05/13/88       | 58  | Minute order of 05/12/88: Defendant's motion to continue trial date heard. Attorney Terrance Mitchell's oral motion to withdraw as counsel for plaintiff is granted for the reasons stated in open court. Trial schedule stricken. Plaintiff given 30 days to retain new counsel. Status hearing set for 13 Jun 88 at 9:30 a.m. Duff, J.  |                                    |
|                |     | Mailed notice 05/13/88.   |                                    |
|                | 59  | Filed 05/12/88: Defendant City of Chicago's notice of motion; Motion to continue trial.   |                                    |

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000008

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF      |     | DEFENDANT   | DOCKET NO. <u>84C9978</u>          |
|----------------|-----|---|------------------------------------|
| WZOREK, EUGENE |     | CITY OF CHICAGO,  | PAGE <u>5</u> OF <u>    </u> PAGES |
| DATE           | NR. | PROCEEDINGS   |                                    |
| 05/13/88       | 60  | Filed 05/12/88: Affidavit of Eugene M. Barnes.  |                                    |
| DMK            | 61  | Filed 05/12/88: State from Eugene Wzorek (Attachment).  |                                    |
| 06/15/88       | 62  | Minute order of 06/13/88: Status hearing held. Trial set for 28 Jun 88 at 10:00 a.m.. Duff, J.<br>Mailed notice 06/15/88.   |                                    |
| BGM            |     |   |                                    |
| 06/27/88       | 63  | Minute order of 06/23/88: Defendant's motion to bar testimony of certain witnesses to be heard and the pretrial conference set for June 28, 1988 at 4:30 p.m. Joint amended pretrial order to be submitted by June 27, 1988. Trial reset for 29 Jun. 88 at 10:00 a.m. Duff, J.<br>Mailed notice 06/27/88, |                                    |
|                | 64  | Filed 06/23/88: Defendant's notice of motion; Motion for pre-trial conference (Attachments).  |                                    |
|                | 65  | Filed 06/23/88: Plaintiff's notice of motion; Motion for leave to file appearance, to reset trial date, and to schedule a pre-trial conference.   |                                    |
| AMB            |     |   |                                    |
| 06/30/88       | 66  | Minute order of 06/29/88: Trial begins - bench. Final Pretrial Order filed. Trial continued to June 30, 1988 at 11:00 a.m. For further detail, see order attached to the original minute order form. Duff, J.<br>No notice required.  |                                    |
|                | 67  | Enter 06/29/88: Final Pretrial Order.   |                                    |
|                | 68  | Filed 06/29/88: Notice of filing; Respondent's addendum to proposed final pretrial order and respondent's proposed findings of fact and conclusions of law.   |                                    |
|                | 69  | Filed 06/29/88: Notice of filing; Respondent's trial brief and motion for directed verdict; Exhibits A thru D attached.   |                                    |
|                | 70  | Filed 06/29/88: Respondent's proposed findings of fact and conclusions of law. (one volume)   |                                    |
| tcm            | 71  | Filed 06/29/88: Appearance of Charles Ex as attorney for defendant/   |                                    |
| 07/06/88       | 72  | Minute order of 06/29/88: Trial begins - bench. Trial adjourned to June 30, 1988 at 10:30 a.m.. Duff, J.<br>No notice mailed.   |                                    |
| BGM            |     |   |                                    |
| 07/06/88       | 73  | Minute order of 06/30/88: Bench trial held and continued to 5 Jul 88 at 10:30 a.m. Duff, J.<br>No notice mailed.  |                                    |
| BGM            |     |   |                                    |
| 07/07/88       | 74  | Filed 06/30/88: Return on desposition subpoena executed as to Terrance Mitchell on 06/30/88.  |                                    |
| AMB            |     |   |                                    |
| 07/08/88       | 75  | Minute order of 07/05/88: Bench trial held; continued to 6 Jul 88 at 10:30 a.m.. Duff, J.<br>No notice mailed.  |                                    |
|                | 76  | Filed 07/05/88: Respondent's notice of filing; Motion for directed verdict (Attachments).   |                                    |
| BGM            |     |   |                                    |
| 07/08/88       | 77  | Minute order of 07/06/88: Trial held - bench. Evidence concluded. Ruling on remedy deferred. Plaintiff given 10 days to retain counsel. Trial ends. Status hearing set for 18 Jul 88 at 9:30 a.m.. Duff, J.<br>Mailed notice 07/08/88.  |                                    |
| BGM            |     |   |                                    |

000009

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CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF                   |     | DEFENDANT  | DOCKET NO. <u>84C9978</u>          |
|-----------------------------|-----|--|------------------------------------|
| WZOREK                      |     | CITY OF CHICAGO  | PAGE <u>6</u> OF <u>    </u> PAGES |
| DATE                        | NR. | PROCEEDINGS  |                                    |
| 07/20/88<br><br><br><br>BGM | 78  | Minute order of 07/18/88: Evidence hearing set for July 20, 1988 at 11:00 a.m.. John Gubbins and Linda Friedman given leave to file their appearances on behalf of plaintiff. Status hearing held. Duff, J.<br>No notice mailed. |                                    |
|                             | 79  | Filed 07/18/88: Appearance of John L. Gubbins and Linda Friedman as counsel for plaintiff.   |                                    |
|                             | 80  | Filed 07/18/88: Rule 39 affidavit of John L. Gubbins.  |                                    |
|                             | 81  | Filed 07/18/88: Rule 39 affidavit of Linda Friedman.   |                                    |
|                             | 82  | Filed 07/18/88: Respondent's notice of filing; Amended proposed findings of fact and conclusions of law.   |                                    |
| 07/21/88<br>BGM             | 83  | Filed 07/20/88: Respondent's notice of motion; Motion to bar testimony of expert witness (Exhibits).   |                                    |
| 07/21/88<br><br><br>BGM     | 84  | Minute order of 07/20/88: Evidentiary hearing held. Steven Shobat given leave to file his appearance on behalf of plaintiff. Status hearing set for 26 Jul 88 at 9:30 a.m.. Duff, J.<br>Mailed notice 07/21/88.                  |                                    |
|                             | 85  | Filed 07/20/88: Appearance of Steven Shobat as counsel for plaintiff.  |                                    |
|                             | 86  | Filed 07/20/88: Rule 39 affidavit of Steven Shobat.  |                                    |
|                             | 87  | Filed 07/20/88: Contingency fee agreement. (Not in public case file).  |                                    |
| 07/27/88<br>RGT             | 88  | Minute Order of 07/26/88: Status hearing held and continued to 29 July 88 at 9:30 a.m. Duff, J.<br>No notice mailed.   |                                    |
| 08/03/88<br>DMK             | 89  | Minute order of 07/29/88: Status hearing held; continued to 01 Aug 88 at 9:30a.m. Duff, J.<br>No notice mailed.  |                                    |
| 08/03/88<br>DMK             | 90  | Minute order of 08/01/88: Hearing set for September 29, 1988 at 10:30a.m. The Court appoints Dr. Jan Fawcett as its expert. Status hearing held. Duff, J.<br>No notice mailed.   |                                    |
| 09/26/88<br><br>BGM         | 91  | Minute order of 09/22/88: Plaintiff's motion to reset hearing date is granted. Hearing date reset to October 31, 1988 at 10:00 a.m.. Duff, J.<br>Mailed notice 09/26/88.   |                                    |
|                             | 92  | Filed 09/22/88: Plaintiff's notice of motion; Motion.  |                                    |
| 09/17/88<br><br>BL          | 93  | Minute order of 10/13/88: Plaintiff's motion to withdraw Steven Shobat as attorney of record is granted. Duff, J.<br>Mailed notice 10/17/88.   |                                    |
|                             | 94  | Filed 10/13/88: Plaintiff's Notice of motion; Motion to withdraw Steven Shobat as attorney of record.  |                                    |

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000010

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF      |     | DEFENDANT   | DOCKET NO. <u>84C9978</u>          |
|----------------|-----|---|------------------------------------|
| WZOREK, EUGENE |     | CITY OF CHICAGO   | PAGE <u>7</u> OF <u>    </u> PAGES |
| DATE           | NR. | PROCEEDINGS   |                                    |
| 10/28/88       | 95  | Minute order of 10/25/88: Defendant City of Chicago's emergency motion for leave to conduct psychiatric examination of petitioner heard. Defendant to re-submit the motion in the form suggested by the court. Duff, J.<br>No notice mailed.                  |                                    |
| LG             | 96  | Filed 10/25/88: Defendant's notice of emergency motion; Motion for leave to conduct psychiatric examination of petitioner or in the alternative, to seek clarification from court-appointed expert (Exhibit A).   |                                    |
| 11/01/88       | 97  | Minute order of 10/26/88: Defendant's third amended emergency motion for leave to conduct psychiatric examination of petitioner is entered and continued generally. Hearing reset to November 1, 1988 at 9:30 a.m. Duff, J.<br>No notice mailed.              |                                    |
| LGL            | 98  | Filed 10/26/88: Notice of amended emergency motion; City of Chicago's amended emergency motion for leave to conduct psychiatric examination of petitioner or in the alternative, to seek clarification from court-appointed expert. (Exhibit A).              |                                    |
| 11/01/88       | 99  | Filed 10/31/88: Notice of filing; Respondent City of Chicago's trial brief concerning damages.  |                                    |
| LGL            |     |   |                                    |
| 11/02/88       | 100 | Minute order of 11/01/88: Hearing on damages held. Mary Stowell given leave to file her appearance as additional counsel for plaintiff. Hearing continued to November 2, 1988 at 10:00 a.m. Duff, J.<br>Mailed notice 11/02/88.                               |                                    |
|                | 101 | Filed 11/01/88: Notice of filing; Plaintiff's motion for leave to file appearance of Mary Stowell.  |                                    |
| LGL            | 102 | Filed 11/01/88: Appearance of Mary Stowell as counsel for plaintiff.  |                                    |
|                | 103 | Filed 11/01/88: Stipulation of facts.   |                                    |
| 11/02/88       | --  | Mailed 11/02/88: Letter re rule 39 affidavit to Mary Stowell.   |                                    |
| LGL            |     |   |                                    |
| 11/07/88       | 104 | Minute order of 11/02/88: Trial held-bench. Parties to submit further information regarding personnel practice by November 16, 1988. Trial will be resumed at a later date. Status hearing set for 14 Dec 88 at 9:30 a.m. Duff, J.<br>Mailed notice 11/07/88. |                                    |
| AC             |     |   |                                    |
| 11/10/88       | 105 | Filed 11/08/88: Rule 39 affidavit of Mary Stowell.  |                                    |
| AC             |     |   |                                    |
| 11/16/88       | 106 | Filed 11/15/88: Defendant's Appendix.   |                                    |
|                | 107 | Filed 11/15/88: Clerk's File copy of transcript of proceedings before Judge Duff on June 30, 1988.  |                                    |
|                | 109 | Filed 11/15/88: Clerk's File copy of transcript of proceedings before Judge Duff on June 29, 1988.  |                                    |
| BL             | 110 | Filed 11/15/88: Notice of filing; Respondent City of Chicago's Trial brief concerning remedies.   |                                    |

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000011

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF      |     | DEFENDANT  | DOCKET NO. <u>84C9978</u>          |
|----------------|-----|--|------------------------------------|
| WZOREK, Eugene |     | CITY OF CHICAGO  | PAGE <u>8</u> OF <u>    </u> PAGES |
| DATE           | NR. | PROCEEDINGS  |                                    |
| 11/21/88       | 111 | Filed 11/17/88: Plaintiff's notice of filing; Petitioner's findings of fact and conclusions of law regarding plaintiff's Shakman petition; Petitioner's supplemental proposal on damages.  |                                    |
| LG             |     |  |                                    |
| 12/02/88       | 112 | Minute order of 12/01/88: Defendant City of Chicago's motion for leave to file previously file trial brief concerning remedies is granted. Duff, J.  |                                    |
| LGL            | 113 | Filed 12/01/88: Notice of motion; Motion.  |                                    |
| 12/09/88       | 114 | Minute order of 12/08/88: Motion for leave to file respondent's response to petitioner's proposed findings of fact and supplemental proposal on damages is granted. Duff, J.   |                                    |
| AC             | 115 | No notice mailed.<br>Filed 12/08/88: Notice of motion; Motion for leave to file respondent's response to petitioner's proposed findings of fact and supplemental proposal on damages.  |                                    |
| 12/12/88       | 116 | Filed 12/08/88: Notice of filing; Respondent's response to petitioner's proposed findings of facts.  |                                    |
| BL             |     |  |                                    |
| 12/16/88       | 117 | Minute order of 12/14/88: Status hearing set for December 14, 1988 is stricken. Duff, J.   |                                    |
| LG             |     | Judge's staff notified counsel by telephone.   |                                    |
| 03/22/89       | 118 | Minute order of 03/21/89: Judgment is entered as follows: This court enters judgment in favor of Eugene Wzorek. The court awards him back pay, pre-judgment interest, and medical and prescription expenses in the amount of \$145,160.68. The court further awards Wzorek front pay and benefits. The court will treat Wzorek's request for reinstatement in supplemental proceedings. Status hearing set for 18 Sep 89 at 9:30 a.m. (For further detail see order attached to the original minute order form.) Duff, J. JS-6 |                                    |
| LGL            | 119 | Entered 03/21/89: Findings of fact and conclusions of law.   |                                    |
|                | 120 | Entered judgment. Clerk.   |                                    |
| 04/27/89       | 121 | Minute order of 04/27/89: Plaintiff's motion to directed the City of Chicago to pay final judgment is granted. Defendant directed to pay the final judgment by May 1, 1989. Defendant's motion to stay is denied. Duff, J.   |                                    |
|                | 122 | No notice mailed.<br>Filed 04/27/89: Plaintiff's notice of motion; Motion to direct City to pay final judgment.  |                                    |
| AMB            | 123 | Filed 04/27/89: Defendant's notice of filing; Motion for stay of execution of judgment and for waiver of bond pending appeal.  |                                    |
| 04-27-89       | 124 | Filed 04-27-89: Defendant's City of Chicago, EMERGENCY NOTICE OF APPEAL, from order dated 04-27-89. (\$105.00 paid).<br>Transmitted 04-27-89: To the 7th Circuit Court of Appeals the short record consisting of a stamped copy of NOA, 7th Cir. Appeal Info. Sheet, copy of appealed order #121 and copy of docket entries, Mailed 04-27-89: To all counsel of record copy of NOA and Cir, Rule 10 letter, with copy of docket entries and 7th Cir. Trans. Forwarded 04-27-89; Copy of NOA and letter to Judge Diff.          |                                    |
| PP             |     |  |                                    |

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000012

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF      |     | DEFENDANT  |  | DOCKET NO. <u>84C9978</u>          |
|----------------|-----|--|--|------------------------------------|
| WZOREK, EUGENE |     | CITY OF CHICAGO ETAL   |  | PAGE <u>9</u> OF <u>    </u> PAGES |
| DATE           | NR. | PROCEEDINGS  |  |                                    |
| 04-27-89       | --  | Mailed 04-27-89: Appellants' Cir. Rule 3(c) letter, regarding Jurisdictional Statement.  |  |                                    |
| PP             |     |  |  |                                    |
| 05/01/89       | 125 | Filed 05/01/89: Acknowledgment of short record from USCA 7th Cir appearance #89-1868.  |  |                                    |
| AC             |     |  |  |                                    |
| 05/11/89       | --- | Certified and transmitted 05/11/89: To the 7th Circuit Court of Appeals the original record consisting of two volumes of pleadings, together with four bound volumes of pleadings (Item Nos. 43, 69, 70 & 106) and two volumes of transcript of proceedings (Item Nos. 107 & 109). |  |                                    |
| PS             | --- | Mailed 05/11/89: To all counsel of record copy of transmittal letter, list of documents and certificates.  |  |                                    |
| 06/01/89       | 126 | Filed 05/31/89: Transcripts of proceedings before the Honorable Judge Duff on 07/05/88 and 07/06/88 (2 vols.: 126-1 and 126-2).  |  |                                    |
| NME            |     |  |  |                                    |
| 06/02/89       | --  | Certified and transmitted 06/02/89: To the 7th Circuit Court of Appeal, the supplemental record on appeal, consisting of two volumes transcripts (Item no. 126).   |  |                                    |
| LG             | --  | Mailed 06/02/89: To all counsel of record, copies of supplemental transmittal letter and supplemental certificate.   |  |                                    |
| 06/09/89       | 127 | Filed 06/08/89: Transcript of proceedings before the Honorable Brian Barnett Duff on 04/27/89 (1 vol.)   |  |                                    |
|                | --  | Certified and transmitted 06/09/89: To the 7th Circuit Court of Appeal, the supplemental record on appeal, consisting of 1 vol. transcript (Item. no. 127)..   |  |                                    |
| LG             | --  | Mailed 06/09/89: To all counsel of record, copies of supplemental transmittal letter and supplemental certificate.   |  |                                    |
| 07/12/89       | 128 | Minute order of 07/11/89: Status hearing reset for 1 Aug. 89 at 9:30 a.m. Duff, J.   |  |                                    |
| AMB            |     | Mailed notice 07/12/89.  |  |                                    |
| 07/21/89       | 129 | Minute order of 07/20/89: On plaintiff's motion, hearing rescheduled to August 16, 1989 at 10:30 a.m. Duff, J.   |  |                                    |
| AC             | 130 | No notice mailed.<br>Filed 07/20/89: Notice of motion; Plaintiff's motion to reschedule hearing.   |  |                                    |
| 08/07/89       | 131 | Minute order of 08/04/89: In response to defendant's motion to bar expert witness testimony, plaintiff shall respond to certain discovery by August 11, 1989. The defendant shall take the expert's desposition as directed in open court. Duff, J.                                |  |                                    |
|                |     | No notice mailed.  |  |                                    |
|                | 132 | Filed 08/04/89: Notice of motion; Motion.  |  |                                    |
| LGL            | 133 | Filed 08/04/89: Memorandum of law in support of City's motion to bar testimony of petitioner's expert witness and all previously undisclosed witnesses. (Exhibits A through F).  |  |                                    |

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000013

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF       |     | DEFENDANT   | DOCKET NO. <u>84 C 9978</u>         |
|-----------------|-----|---|-------------------------------------|
| WZOREK, Eugene  |     | CITY OF CHICAGO et al   | PAGE <u>10</u> OF <u>    </u> PAGES |
| DATE            | NR. | PROCEEDINGS   |                                     |
| 08/11/89<br>LGL | 134 | Filed 08/10/89: Notice of filing; plaintiff's memorandum of law in opposition to the City's motion to bar testimony. (Attachments).   |                                     |
| 08/15/89<br>AC  | 135 | Filed 08/14/89: Respondent's notice of filing; Reply memorandum of law in support of city's motion to bar petitioner's expert witness (Attachments).  |                                     |
| 08/17/89<br>AC  | 136 | Minute order of 08/16/89: Hearing held. Plaintiff to proposed findings of fact and conclusions of law by August 17, 1989. Response to be filed by August 18, 1989. Duff, J.<br>No notice mailed.  |                                     |
| 08/18/89<br>AC  | 137 | Filed 08/17/89: Petitioner's proposal on remedies.  |                                     |
| 08/21/89<br>NME | 138 | Filed 08/18/89: Petitioner's proposal on remedies (Attachments).  |                                     |
| 08/24/89<br>AMB | 139 | Filed 08/23/89: Transcript of proceedings before the Honorable Brian Barnett Duff on 07/20/89.<br>Certified and transmitted 08/25/89: To the 7th Circuit Court of Appeals supplemental record consisting of one volume of pleadings (item # 139).   |                                     |
| 09/06/89        | 140 | Filed 08/18/89: Notice of filing; Respondent City of Chicago's trial brief concerning reinstatement and front pay (Attachments) (Exhibits).   |                                     |
|                 | 141 | Filed 08/18/89: STipulation of facts.   |                                     |
| 09/07/89        | 142 | Minute order of 09/06/89: Judgment is entered as follows: The Court increases the award of back pay entered March 21, 1989 by \$14,500.00 and its award of prejudgment interest by \$362.50. The court further awards front pay in the amount of \$33,518.17. The court orders defendant to provide for plaintiff's psychiatric treatment for the next two years, beginning from the date of this order, up to the amount of \$150,000.00. (For further detail see order attached to the original minute order form.) Duff, J.<br>Mailed notice 09/07/89. |                                     |
|                 | 143 | Entered 09/06/89: Findings of fact and conclusions of law.  |                                     |
| LGL             | 144 | Entered Judgment. Clerk.  |                                     |
| 09/08/89        | 145 | Minute order of 09/07/89: Mary Stowell and Linda Friedman granted leave to withdraw appearances as counsel for plaintiff. Duff, J.<br>No notice mailed.   |                                     |
| AC              | 146 | Filed 09/07/89: Plaintiff's notice of filing; Motion for leave to withdraw as attorneys of record.  |                                     |

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000014



CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF      |     | DEFENDANT   | DOCKET NO. <u>84C9978</u>           |
|----------------|-----|---|-------------------------------------|
| WZOREK, Eugene |     | CITY OF CHICAGO   | PAGE <u>11</u> OF <u>    </u> PAGES |
| DATE           | NR. | PROCEEDINGS   |                                     |
| 09/12/89       | 147 | Filed 09/11/89: Transcripts of proceedings before Judge Duff held on 08/03/89 and 08/04/89 (2 Vols.: 147-1, 147-2).   |                                     |
|                | --  | Certified and transmitted 09/12/89: To the U.S.C.A. for the 7th. Circuit supplemental record on appeal consisting of 2 volumes of transcripts (Item #147).  |                                     |
| IS             | --- | Mailed 09/12/89: To all counsel of record copy of transmittal letter and supplemental certificate.  |                                     |
| 09/15/89       | 148 | Minute order of 09/14/89: Filed motion for leave to withdraw and for substitution of attorneys, and City of Chicago's motion for stay of execution of judgment and waiver of bond pending appeal. Charles Ex given leave to withdraw and Mary Smith given leave to file her appearance on behalf of defendant. Defendant's motion for stay of execution of judgment denied for the reasons stated in open court. Motion for waiver of bond pending appeal heard. Duff, J. |                                     |
|                |     | No notice mailed.   |                                     |
|                | 149 | Filed 09/14/89: Defendant City of Chicago's notice of motion; Motion for leave to withdraw and for substitution of attorneys.   |                                     |
| IS             | 150 | Filed 09/14/89: Notice of motion; Motion for stay of execution of judgment and for waiver of bond pending appeal.   |                                     |
| 09/18/89       | 151 | Filed 09/15/89: Defendant's City of Chicago, NOTICE OF APPEAL, from orders dated 03/21/89 and 09/07/89. (\$105.00 paid). Transmitted 09/18/89: To the 7th Circuit Court of Appeals the short record consisting of a stamped copy of NOA, 7th Cir, Appeal, Info. Sheet, copy of appealed orders #142, #143 and #144 and copy of docket entries.  |                                     |
|                |     | Mailed 09/18/89: To all counsel of record copy of NOA and Cir. Rule 10 letter, with copy of docket entries and 7th Cir. Trans. Info. Sheet to: Mardell Nereim.  |                                     |
| PP             |     | Forwarded 09/18/89: Copy of NOA and letter, to Judge Duff.  |                                     |
| 09/18/89       | 152 | Filed 09/15/89: Appellant's Jurisdictional Statement.   |                                     |
| PP             |     | Forwarded 09/18/89: Original Jurisdictional Statement to the USCA.  |                                     |
| 09/22/89       | 153 | Filed 09/21/89: Acknowledgment of receipt of short record, USCA #89-2988 (Attachment).  |                                     |
| IS             |     |   |                                     |
| 09/26/89       | 154 | Filed 09/26/89: Defendant's designation for inclusion in record on appeal.  |                                     |
| KL             |     |   |                                     |
| 10/03/89       | 155 | Filed 10/02/89: Transcript of proceedings before the Honorable Brian Barnett Duff held on 07/20/89.   |                                     |
| LGL            |     |   |                                     |
| 10/05/89       | --- | Certified and transmitted 10/05/89: To the 7th Circuit Court of Appeals the original record consisting of one volume of pleadings, together with one volume of transcript of proceedings (Item No. 155).  |                                     |
|                | --- | Mailed 10/05/89: To all counsel of record, copy of transmittal letter, list of documents and certificates.  |                                     |
| PS             |     |   |                                     |

CONTINUED

000015

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF           |     | DEFENDANT  | DOCKET NO. <u>84C9978</u>             |
|---------------------|-----|--|---------------------------------------|
| WZOREK, EUGENE      |     | CITY OF CHICAGO  | PAGE <u>12</u> OF <u>      </u> PAGES |
| DATE                | NR. | PROCEEDINGS  |                                       |
| 12/13/89<br>AMB     | 156 | Filed 12/12/89: Plaintiff's notice of filing; Motion for attorney's fees and costs (Attachments) (Exhibits).   |                                       |
| 12/15/89            | 157 | Minute order of 12/14/89: Filed petitioners Mary Stowell and Linda D. Friedman's request for award of attorneys fees. For the reasons stated in open court, the court grants attorney Mary Stowell's petition for attorney's fees in the amount of \$4,685.00. The court also grants attorney Linda Friedman attorney's fees in the amount of \$7,870.50. Duff, J.<br>Mailed notice 12/15/89.  |                                       |
| IS                  | 158 | Filed 12/14/89: Petitioners Mary Stowell and Linda D. Friedman's notice of motion; Petition for award of attorneys' fees; Affidavit of Mary Stowell (Attachment); Affidavit of Linda D. Friedman (Attachment).   |                                       |
| 12/15/89            | 159 | Minute order of 12/14/89: Filed plaintiff's motion for attorney's fees and costs, memorandum and affidavits. John Gubbins given leave to file petition for attorney's fees. City given to December 18, 1989 to file a response. Petition for fees entered and continued to December 20, 1989 at 9:30 a.m. Plaintiff's motion for leave to subpoena prior attorneys and to move to strike any attorneys liens is entered and continued generally. Duff, J.<br>No notice mailed. |                                       |
|                     | 160 | Filed 12/14/89: Plaintiff's notice of motion; Motion for attorney's fees and costs; Memorandum of law in support of petition for attorney's fees and costs; Affidavit of John L. Gubbins.  |                                       |
| IS                  | 161 | Filed 12/14/89: Plaintiff's notice of motion; Motion for leave to subpoena prior attorneys and to move to strike any attorney liens.   |                                       |
| 12/19/89<br>KL      | 162 | Filed 12/18/89: Defendant's notice of filing; Response to John L. Gubbins' motion for attorney's fees and costs (Exhibits).  |                                       |
| 12/21/89<br><br>KL  | 163 | Minute order of 12/20/89: Defendant's previously filed response to plaintiff's fees and costs as attorney Gubbins is stricken. Defendants given to January 3, 1990 to file an answering memorandum to the petition for fees and costs. Reply to answer brief due 17 Jan 90. Duff, J.<br>No notice mailed.  |                                       |
| 12/28/89<br><br>LGL | 164 | Filed 12/27/89: Copy of order from U.S. Court of Appeals dated 12/20/89... <u>It is further ordered that appellee's motion to expedite this appeal is granted.</u> Briefing in appeal No. 89-2988 is scheduled to be completed by January 22, 1990. Argument for these consolidated appeals shall be set as early as possible during the April session.  |                                       |
| 01/03/90<br>IS      | 165 | Filed 01/02/90: Defendant's notice of filing; Supplemental response to John L. Gubbins' motion for attorney's fees and costs.  |                                       |
| 01/16/90<br>IS      | 166 | Filed 01/12/90: Plaintiff's attorney response to defendant's supplemental response (Attachments).  |                                       |

(CONTINUED)

000016

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF      |     | DEFENDANT  | DOCKET NO. <u>84 C 9978</u>         |
|----------------|-----|--|-------------------------------------|
| WZOREK, Eugene |     | CITY OF CHICAGO etc.   | PAGE <u>13</u> OF <u>    </u> PAGES |
| DATE           | NR. | PROCEEDINGS  |                                     |
| 03/08/90       | 167 | Minute order of 03/07/90: The court orders plaintiff to provide certain particulars by March 26, 1990. City given to April 2, 1990 to respond. (For further detail see order on the reverse of the original minute order form.) Duff, J. Mailed notice 03/08/90.   |                                     |
| LGL            |     |  |                                     |
| 03/27/90       | 168 | Filed 03/26/90: Plaintiff's supplemental specifications of submitted hours for attorneys fees. (Exhibit A, B).   |                                     |
| LGL            |     |  |                                     |
| 04/04/90       | 169 | Filed 04/03/90: Defendant's notice of filing; Response to petitioner's supplemental specifications of submitted hours for attorneys fees (Exhibit).  |                                     |
| KL             |     |  |                                     |
| 05/21/90       | 170 | Minute order of 05/18/90: The court awards Wzorek \$16,000 in attorneys fees for the work of John L. Gubbins. The court denies Wzorek's petition for costs as untimely. The court gives Wzorek leave to supplement his request under Section 1988 for the expenses of Dr. Jerry Goldman, within ten days. ( For further detail see order attached to the original minute order form.) Duff, J. Mailed notice 05/21/90. |                                     |
| cmf            | 171 | Entered 05/18/90: Memorandum Opinion.  |                                     |
| 06/13/90       | 172 | Filed 06/12/90: Plaintiff's notice of filing; Supplemental request for expert Jerry I. Goldman's fees (Attachment).  |                                     |
| KL             |     |  |                                     |
| 07/20/90       | 173 | Minute order of 07/19/90: All counsel are directed to appear for the status hearing. Status hearing set for 30 Jul 90 at 9:30 a.m. Duff, J. Mailed notice 07/20/90.  |                                     |
| CMF            |     |  |                                     |
| 08/01/90       | 174 | Minute order of 07/30/90: Judgment is entered as follows: The court denies plaintiff's supplemental request for fees for the expenses of Dr. Jerry Goldman as untimely. The Clerk is directed to enter judgment on the plaintiffs' petitions for fees which were awarded on December 14, 189 and March 6, 1990. Status hearing held. Duff, J. Mailed notice 08/01/90.  |                                     |
| JJ             | 175 | Entered judgment. Clerk.   |                                     |
| 08/13/90       | 176 | Minute order of 08/09/90: For the reasons stated in open court, plaintiff's motion for disposition of appellate attorneys fees by John Gubbins is granted. Petition for attorney's fees by Mark LeFevour is granted. Duff, J. No notice mailed.  |                                     |
|                | 177 | Filed 08/09/90: Plaintiff's notice of motion; Plaintiff's attorney's motion for disposition of appellate attorneys fees (Attachments).   |                                     |
|                | 178 | Filed 08/09/90: Petitioner Mark L. LeFevour's notice of motion.  |                                     |
| CMF            | 179 | Filed 08/09/90: Petition for attorney's fees (Attachments).  |                                     |
| 08/13/90       | 180 | Minute order of 08/10/90: For the reasons stated in open court, the defendant City of Chicago is ordered to pay plaintiff the judgment in full. Duff, J. No notice mailed.   |                                     |
| CMF            | 181 | Filed 08/10/90: Petitioner's motion for payment of judgment in full (Attachment).  |                                     |

(continued)

000017

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF      |     | DEFENDANT   | DOCKET NO. <u>84C9978</u>           |
|----------------|-----|---|-------------------------------------|
| WZOREK, Eugene |     | CITY OF CHICAGO   | PAGE <u>14</u> OF <u>    </u> PAGES |
| DATE           | NR. | PROCEEDINGS   |                                     |
| 08/14/90       | 182 | Filed 08/10/90: Letter from the U.S.C.A. for the 7th Circuit returning the record on appeal consisting of two volumes of pleadings, ten volumes of transcripts and four volumes of loose pleadings.   |                                     |
|                | 183 | Filed 08/10/90: Certified copy of order from the U.S.C.A. for the 7th Circuit entered 07/13/90: <u>It is ordered and adjudged ... that the order of the district court requiring the City of pay \$150,000 worth of petitioner's psychiatric bills is Reversed ; in all other respects, the April and September 1989 orders are Affirmed, with costs, in accordance with the opinion of this court filed this date.</u> |                                     |
|                | 184 | Filed 08/10/90: U.S.C.A. for the 7th Circuit opinion argued 05/11/90; decided 07/13/90.   |                                     |
| CMF            |     |   |                                     |
| 12/03/90       | 185 | Minute order of 10/05/90; Status hearing held. Duff, J. No notice mailed. (Temporarily unavailable for docketing).  |                                     |
| HP             |     |   |                                     |
| 12/03/90       | 186 | Filed 10/10/90: Letter from the U.S.C.A. for the 7th Circuit returning one volume of pleadings (entire record now returned) (Temporarily unavailable for docketing).  |                                     |
| HP             |     |   |                                     |
| 11/01/91       | 187 | Minute order of 10/31/91: On plaintiff's motion, John Gubbins given leave to withdraw his appearance and Gordon James Arnett given leave to file his appearance on behalf of plaintiff. Duff, J. Judge's staff telephoned counsel.  |                                     |
| SB             | 188 | Filed 10/31/91: Plaintiff's counsel's notice of motion; Motion for substitution of attorney (Exhibit).  |                                     |
| 12/04/91       | 189 | Filed 12/03/91: Appearance of Gordon James Arnett as counsel for plaintiff.   |                                     |
| SB             | 190 | Filed 12/03/91: Rule 39 affidavit of Gordon James Arnett.   |                                     |
| 02/18/92       | 191 | Minute order of 02/13/92: Plaintiff's motion to compel former attorney to return documents is entered and continued to 02/20/92 at 9:30 am. Duff, J. No notice.   |                                     |
| CMF            | 192 | Filed 02/13/92: Notice of motion; Motion (Exhibit).   |                                     |
| 02/18/92       | 193 | Minute order of 02/13/92: Plaintiff's motion for an order for psychiatric exam is entered and continued to 02/20/92 at 9:30 am. Duff, J. No notice.   |                                     |
| CMF            | 194 | Filed 02/13/92: Notice of motion; Motion.   |                                     |
|                | 195 | Filed 02/13/92: Memorandum in support of motion for examination of plaintiff by the court-appointed psychiatrist.   |                                     |

CONTINUED

000018

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF              |     | DEFENDANT   |  | DOCKET NO. 84C9978    |
|------------------------|-----|---|--|-----------------------|
| WZOREK, Eugene         |     | CITY OF CHICAGO   |  | PAGE 15 OF ____ PAGES |
| DATE                   | NR. | PROCEEDINGS   |  |                       |
| 04/08/92               | 196 | Minute order of 04/07/92: Status hearing held and continued to May 8, 1992 at 9:30 a.m. Parties informed the court that Dr. Fawcett will examine the plaintiff after he has received the psychiatric evaluations from the previous two doctors. Duff, J.<br>No notice mailed.                       |  |                       |
| SB                     |     |   |  |                       |
| 05/07/92               | 197 | Filed 05/06/92: Plaintiff's notice of filing; Motion to turn over defendant, City of Chicago's file.  |  |                       |
| SB                     |     |   |  |                       |
| 05/12/92               | 198 | Minute order of 05/08/92: Status hearing held; continued to 06/12/92 at 9:30 a.m. Parties to submit a protective order regarding the treating physician's evaluation of Mr. Wzorek as discussed in open court. The city to comply with plaintiff's discovery request. Duff, J.<br>No notice mailed. |  |                       |
| SB                     |     |   |  |                       |
| 05/19/92               | 199 | Minute order of 05/18/92: On the court's own motion status hearing set for June 12, 1992 is reset to June 23, 1992 at 9:30 a.m. Duff, J.<br>Mailed notice 05/19/92.   |  |                       |
| SB                     |     |   |  |                       |
| 06/26/92               | 200 | Minute order of 06/23/92: Status hearing held. Defendants orally withdraw motion for a contempt order. Parties to submit a proposed protective order. Duff, J.<br>No notice mailed.   |  |                       |
| SB                     |     |   |  |                       |
| 06/26/92               | 201 | Minute order of 06/25/92: Plaintiff's motion for a protective order is granted. Duff, J.<br>Mailed notice 06/26/92.   |  |                       |
| SB                     | 202 | Filed 06/25/92: Plaintiff's notice of motion; Motion for protective order.  |  |                       |
| 07/01/92               | 203 | Minute order of 06/25/92: Motion granted. Protective order to be submitted. Duff, J.<br>No notice mailed.   |  |                       |
| SB                     | 204 | Filed 06/25/92: Defendant's notice of motion; Motion for finding of contempt and for sanctions (Exhibits).  |  |                       |
| 07/06/92               | 205 | Minute order of 07/01/92: Enter protective order. (For further detail see order attached to the original minute order form.) Duff, J.<br>Mailed notice 07/06/92.  |  |                       |
| SB                     | 206 | Entered 07/01/92: Protective order.   |  |                       |
| 07/27/92               | 207 | Minute order of 07/23/92: Plaintiff's motion to produce the court reporter's electronic recording tapes is denied. Duff, J.<br>Mailed notice.   |  |                       |
| VKD                    | 208 | Filed 07/23/92: Plaintiff's notice of motion; Motion.   |  |                       |
| <b>FOR DISPOSITION</b> |     |   |  |                       |
| 01/04/93               | 209 | Filed 12/31/92: Defendant's notice of filing; Response to plaintiff's motion for finding of contempt and for sanctions (Exhibits).  |  |                       |
| VKD                    |     |   |  |                       |

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000019

CIVIL DOCKET CONTINUATION SHEET

| PLAINTIFF     |     | DEFENDANT   | 84 C 9978                     |
|---------------|-----|---|-------------------------------|
| EUGENE WZOREK |     | CITY OF CHICAGO   | DOCKET NO. _____              |
|               |     |   | PAGE <u>16</u> OF _____ PAGES |
| DATE          | NR. | PROCEEDINGS   |                               |
| 01/08/93      | 210 | Minute order of 01/07/93; Plaintiff's motion for a contempt order is withdrawn. Duff, J.  |                               |
|               |     | Mailed notice.  |                               |
| VKD           | 211 | Filed 01/07/93: Plaintiff's notice of motion; Motion for finding of contempt and for sanctions (Exhibit).   |                               |
| 01/28/93      | 212 | Minute order of 01/28/93: Plaintiff's motion for an order regarding plaintiff's request for admissions is denied.   |                               |
|               |     | Duff, J.  |                               |
|               |     | No notice   |                               |
| VMJ           | 213 | Filed 01/28/93: Plaintiff's notice of motion; Motion to challenge the sufficiency of the "answers or objections" if any, to plaintiff's Rule 36(a) request for admission (Exhibits).  |                               |
| 12/01/93      | 214 | Minute order of 11/19/93: Thomas M. Arnett's motion to appear for plaintiff relative to the petition for further proceedings after remand as to future damages is granted. Petition for further proceedings after remand is set for 12/23/93 at 9:30 a.m. |                               |
| VKD           |     |   |                               |
| 12/01/93      | 215 | Filed 11/23/93: Notice of motion; Motion for leave for Thomas M. Arnett, Exq. to appear for plaintiff relative to the attached petition for further proceedings after remand as to future damages.  |                               |
|               | 216 | Filed 11/23/93: Plaintiff's petition for further proceedings after remand as to future damages.   |                               |
| VKD           |     |   |                               |
| 01/07/94      | 217 | Filed 12/23/93: Plaintiff's supplemental petition for rule for civil and criminal contempt (Exhibits); Notice of motion.  |                               |
|               | 218 | Minute order of 12/23/93: Plaintiff's supplemental petition for rule for civil and criminal contempt is entered and continued generally. Duff, J.   |                               |
| VKD           |     | No notice   |                               |
| 04/14/94      | 219 | Filed 04/13/94: Transcript of proceedings for the following dates: 08/16/89. Before Honorable Brian Barnett Duff  |                               |
| jmp           |     |   |                               |
| 07/22/94      | 220 | Minute order of 07/21/94: Defendant's motion to strike plaintiff's complaint is denied for the reasons stated in open court. Duff, J.   |                               |
|               |     | No notice   |                               |
|               | 221 | Filed 07/21/94: Defendant's notice of motion; Motion to strike plaintiff's complaint.   |                               |
| VKD           |     |   |                               |
| 10/13/94      | 222 | Filed 10/11/94: Transcript of proceedings for the following dates: 08/16/89 before Honorable Brian Barnett Duff.  |                               |
| VKD           |     |   |                               |
| 12/01/94      | 223 | Filed 10/19/94; Plaintiff's motion for leave to file appearance. (temporarily unavailable for docketing).   |                               |
| VKD           |     |   |                               |
| 01/14/95      | 224 | Filed 01/06/95; Respondent City of Chicago's response to petitioner's motion for fule to show cause (Exhibits); Notice of filing.   |                               |
| VKD           |     |   |                               |

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000020

CIVIL DOCKET CONTINUATION SHEET

|               |  |                 |                       |
|---------------|--|-----------------|-----------------------|
| PLAINTIFF     |  | DEFENDANT       | 84 C 9978             |
| Eugene Wzorek |  | City of Chicago | DOCKET NO. _____      |
|               |  |                 | PAGE 17 OF ____ PAGES |

| DATE            | NR. | PROCEEDINGS   |
|-----------------|-----|---|
| 01/18/95<br>VKD | 225 | Filed 01/13/94: Petitioner's notice of filing; Reply to City's response to petitioner's motion for rule to show cause (Exhibit).  |
| 01/30/95<br>VKD | 226 | Minute order of 01/11/95: Status hearing reset to 02/27/95 at 9:30 a.m. Respondents' response to petitioner's motion for rule to show cause is extended to 01/06/95; reply due 01/13/95. Duff, J.<br>Telephoned notice (temporarily unavailable for docketing). |
| 10/4/95<br>CMF  | 227 | Minute order of 9/14/95: Petitioner's motion to alter or amend judgment pursuant to FRCP 52(b) and 59(e) is denied as untimely. J. Duff.<br>No notice.  |
|                 | 228 | Filed 9/14/95: Petitioner's motion to alter or amend judgment pursuant to FRCP 52(b) and 59(e) (Attachments); Notice of hearing.  |
| 10/17/95        | 229 | Filed 12/19/94: Petitioner's motion for rule to show cause (Exhibits). Notice of motion (Temporarily unavailable for docketing)   |
| 10/17/95        | 230 | Filed 03/13/95: Petitioner's motion to alter or amend judgment pursuant to Fed. R. Civ. P. 52(b) and 59(e); Notice of filing (Temporarily unavailable for docketing)  |
|                 | 231 | Filed 03/13/95: Petitioner's memorandum in support of motion to alter or amend judgment pursuant to Fed. R. Civ. P. 52(b) ( and 59(e) (Exhibits) (Temporarily unavailable for docketing)  |
|                 | 232 | Filed 04/13/95: Petitioner's request for court to rule on motion. Notice of filing (Temporarily unavailable for docketing)  |
|                 | 233 | Filed 08/11/95: Petitioner's notice of hearing regarding petitioner's request for court to rule on motion filed 04/13/95 and motion to alter or amend judgment pursuant to Fed. R. Civ. P. 52(b) ( and 59(e) (Temporarily unavailable for docketing)            |
| jmp             | 234 | Filed 08/31/95: Petitioner's notice of hearing regarding petitioner's motion to alter or amend judgment pursuant to Fed. R. Civ. P. 52(b and 59(e) filed 03/13/95 (Attachments) (Temporarily unavailable for docketing)   |
| 10/17/95<br>jmp | 235 | Filed 10/12/95: Letter to Office of the clerk dated 10/10/95 from petitioner.   |
| 10/17/95        | 236 | Filed 10/12/95: NOTICE OF APPEAL filed by plaintiff from (227-1) (0105-00-0100)   |
| 10/17/95        | 237 | Filed 10/12/95: NOTICE OF APPEAL filed by defendant from (227-1) (0105-00-0100)   |
| 10/17/95        | 238 | Filed 10/12/95: NOTICE OF APPEAL filed by plaintiff from (227-1) (0105-00-0100)   |
| 10/17/95        | 239 | Filed 10/12/95: NOTICE OF APPEAL filed by defendant from (227-1) (0105-00-0100)   |

CLOSED  
JUL 30 1995  
FOR DISPOSITION

(continue-d)

000021

**United States District Court**  
**Northern District of Illinois - CM/ECF LIVE, Ver 6.2.1 (Chicago)**  
**CIVIL DOCKET FOR CASE #: 1:84-cv-09978**

Wzorek v. Chgo, Cty of  
Assigned to: Brian Barnett Duff  
Demand: \$0  
Case in other court: 95-03470  
Cause: 28:1331 Federal Question: Other Civil Rights

Date Filed: 11/19/1984  
Date Terminated: 03/21/1989  
Jury Demand: None  
Nature of Suit: 442 Civil Rights:  
Jobs  
Jurisdiction: Federal Question

**Plaintiff**

**Eugene Wzorek**

represented by **James Michael Chesloe**  
Attorney at Law  
1030 S. LaGrange Road, Suite 11  
LaGrange, IL 60525  
(708) 579-5353  
Email: jcheslaw@gmail.com  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

V.

**Defendant**

**City of Chicago, The**  
*a Municipal Corporation*

represented by **Michael John Crowley**  
City of Chicago, Law Department  
Corporation Counsel  
30 North LaSalle, Suite 1020  
Chicago, IL 60602  
(312) 744-5100  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

| Date Filed | # | Docket Text   |
|------------|---|---|
| 04/27/1989 | 1 | CIVIL DOCKET FOR CASE #: 1:84-cv-09978<br>FOR PREVIOUS ENTRIES see manual docket sheet. (fce) (Entered: 11/08/1995) |



|            |     |   |
|------------|-----|---|
| 10/13/1995 | 237 | DOCKETING STATEMENT by plaintiff Eugene Wzorek regarding appeal [236-1] . (fce) (Entered: 11/08/1995)   |
| 10/17/1995 | 236 | NOTICE OF APPEAL by plaintiff Eugene Wzorek ( \$105.00 pd) (fce) (Entered: 11/08/1995)  |
| 10/17/1995 |     | TRANSMITTED to the 7th Circuit the short record on appeal . Mailed notice to all counsel. (fce) (Entered: 11/08/1995)   |
| 10/19/1995 | 238 | ACKNOWLEDGEMENT of receipt of short record on appeal USCA 95-3470 (fce) (Entered: 11/08/1995)   |
| 10/23/1995 | 239 | SEVENTH CIRCUIT transcript information sheet (fce) (Entered: 11/08/1995)  |
| 10/23/1995 | 240 | DESIGNATION by Eugene Wzorek of appeal record no. 95-3470 (Attachments); Notice of filing. (fce) (Entered: 11/08/1995)  |
| 11/09/1995 | 241 | TRANSCRIPT of proceedings for the following date(s): 12/5/94 7/23/92, 9/14/95, 7/21/94 and 6/23/92 Before Honorable Brian Barnett Duff (5 Vols: 241-1 through 241-5). (fce) (Entered: 11/13/1995)   |
| 11/09/1995 | 244 | TRANSCRIPT of proceedings for the following date(s): 10/19/94. Before Honorable Brian Barnett Duff. (Temporarily unavailable for docketing) (jmp) (Entered: 01/10/1996)   |
| 11/09/1995 | 245 | TRANSCRIPT of proceedings for the following date(s): 02/27/95. Before Honorable Brian Barnett Duff. (Temporarily unavailable for docketing) (jmp) (Entered: 01/10/1996)   |
| 11/14/1995 | 242 | MOTION by plaintiff Eugene Wzorek to supplement record on appeal [242-1] (Attachment); Notice of hearing. (fce) (Entered: 12/01/1995)   |
| 11/14/1995 | 243 | MINUTE ORDER of 11/14/95 by Hon. Brian Barnett Duff : Granting petitioner's motion to supplement record on appeal [242-1]. The clerk is directed to supplement the record on appeal with a copy of the 2/27/95 minute order entered in error in case 94 C 1088, Eugene Wzorek v. City of Chicago. No notice (fce) (Entered: 12/01/1995) |
| 12/12/1995 |     | TRANSMITTED to the 7th Circuit the long record on appeal no. 95-3470 consisting of five volumes of pleadings, sixteen volumes of transcripts, two volumes of exhibits and three volumes of loose pleadings. Mailed notice to all counsel. (las) (Entered: 12/12/1995)   |
| 07/03/1996 | 246 | CERTIFIED copy of Order from the 7th Circuit. ( 95-3470) (jmp)<br>2 CIVIL DOCKET FOR CASE # 1:84-cv-09978<br>(Entered: 07/08/1996)  |

|            |     |  |
|------------|-----|--|
| 07/11/1996 | 247 | LETTER from the 7th Circuit returning the record on appeal no. 95-3470 consisting of five (5) volumes of pleadings; three (3) loose pleadings; eighteen (18) volumes of transcripts; two (2) volumes of exhibits to be returned at a later date. (jmp) (Entered: 07/15/1996) |
| 07/11/1996 | 248 | CERTIFIED COPY of order from the 7th Circuit: Affirming the decision of the District Court [236-1] . ( 95-3470) (jmp) (Entered: 07/15/1996)  |
| 07/11/1996 | 249 | CERTIFIED copy of Order from the 7th Circuit. ( 95-3470) (jmp) (Entered: 07/15/1996)   |
| 07/30/1996 | 250 | LETTER from the 7th Circuit returning the record on appeal no. 95-3470 consisting of two volumes of exhibits (hp) (Entered: 08/01/1996)  |
| 07/30/1996 | 251 | LETTER from the 7th Circuit returning the record on appeal no. 95-3470 consisting of two (2) volumes of exhibits (jmp) (Entered: 08/06/1996)   |

|                             |                      |                         |               |
|-----------------------------|----------------------|-------------------------|---------------|
| <b>PACER Service Center</b> |                      |                         |               |
| <b>Transaction Receipt</b>  |                      |                         |               |
|                             |                      |                         |               |
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| 03/13/2018 22:40:51         |                      |                         |               |
| <b>PACER Login:</b>         | Jul801:4147955;<br>0 | <b>Client Code:</b>     |               |
| <b>Description:</b>         | Docket Report        | <b>Search Criteria:</b> | 1:84-cv-09978 |
| <b>Billable Pages:</b>      | 2                    | <b>Cost:</b>            | 0.20          |
|                             |                      |                         |               |

**Attachment B:**

708 F.Supp. 954

Wzorek v. City of Chicago, et al

No. 84-CV-9978

March 21, 1989

United States District Court, N.D. Illinois, Eastern Division.

Eugene WZOREK, Plaintiff,

v.

CITY OF CHICAGO, an Illinois municipal corporation, Defendant.

No. 84 C 9978.

March 21, 1989.

Former motor truck driver for city department of sewers brought action after his employment was terminated. The District Court, Brian Barnett Duff, J., held that: (1) driver established that his political associations were a motivating factor in his discharge; (2) driver was entitled to backpay and prejudgment interest on backpay award; (3) driver was entitled to recover medical and prescription expenses; and (4) driver would be entitled to reinstatement upon recovery from his emotional infirmities, and would be entitled to front pay and benefits in the interim.

So ordered.

## **West Headnotes (4)**Collapse West Headnotes

[Change View](#)

### 1Municipal Corporations

[Liability for Unauthorized Acts](#)

### Municipal Corporations



[Compensation After Discharge, Suspension, or Retirement](#)

Former motor truck driver for city department of sewers established by clear and convincing evidence that his political associations were a motivating factor in his discharge, entitling former driver to damages including backpay.

[0 Case that cites this headnote](#)



[268Municipal Corporations](#)

[268VOfficers, Agents, and Employees](#)

[268V\(C\)Agents and Employees](#)

[268k218Removal, Discharge, Transfer or Demotion](#)

268k218(10) Liability for Unauthorized Acts



268 Municipal Corporations

268V Officers, Agents, and Employees

268V(C) Agents and Employees

268k220 Compensation

268k220(6) Compensation After Discharge, Suspension, or Retirement

**2 Interest**



Labor Relations and Employment

Former motor truck driver for city department of sewers, who was discharged because of his political associations, was entitled to prejudgment interest on award of backpay, inasmuch as city violated consent decree entered in previous litigation, and former driver was unable to seek further work due to emotional problems caused by discharge.

0 Case that cites this headnote



**219 Interest**

219III Time and Computation

219k39 Time from Which Interest Runs in General

219k39(2.5) Prejudgment Interest in General

219k39(2.40) Labor Relations and Employment

**3 Municipal Corporations**



Compensation After Discharge, Suspension, or Retirement

Former motor truck driver for city department of sewers, who was discharged because of his political associations, was entitled to recover medical and prescription expenses related to treatment of his emotional problems, inasmuch as city willfully violated consent decree entered in previous litigation, and former driver's termination precipitated emotional problems he suffered.

1 Case that cites this headnote



**268 Municipal Corporations**

268V Officers, Agents, and Employees

268V(C) Agents and Employees

268k220 Compensation

268k220(6) Compensation After Discharge, Suspension, or Retirement

**4 Municipal Corporations**



Reinstatement

**Municipal Corporations**



Compensation After Discharge, Suspension, or Retirement

Former motor truck driver for city department of sewers, who was discharged because of his political associations and who suffered emotional problems because of his discharge, would be entitled to reinstatement upon recovery from his emotional infirmities, and in the interim, was entitled to front pay and benefits.

1 Case that cites this headnote



268Municipal Corporations

268VOfficers, Agents, and Employees

268V(C)Agents and Employees

268k218Removal, Discharge, Transfer or Demotion

268k218(11)Reinstatement



268Municipal Corporations

268VOfficers, Agents, and Employees

268V(C)Agents and Employees

268k220Compensation

268k220(6)Compensation After Discharge, Suspension, or Retirement

## **Attorneys and Law Firms**

\*955 John L. Gubbins, Linda Friedman, John L. Gubbins & Associates, P.C., Chicago, for plaintiff.

Eugene Wzorek, pro se.

James D. Montgomery, Corp. Counsel, Arthur N. Christie, Mary L. Smith, Jonathan Siner, A. Charles Ex, Asst. Corp. Counsel, Chicago, Ill., for defendant.

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

BRIAN BARNETT DUFF, District Judge.

This action came before this court for trial without a jury on June 29–30 and July 5–6, 1988 on the issues of liability. At the close of this evidence, the court ruled in favor of plaintiff Eugene Wzorek and ordered further trial on damages. The trial resumed on November 1–2, 1988. The court has heard the evidence and has considered the testimony, exhibits, memoranda of law and arguments of

Wzorek *pro se* and counsel. Now fully advised in the premises, the full trial on Wzorek's claim having been concluded, the court finds the following facts:

1. Eugene Wzorek started working for the City of Chicago in 1973 as a Motor Truck Driver for the Streets and Sanitation Department. In 1977, he was appointed to the position of Motor Truck Driver for the Department of Sewers of the City of Chicago. Wzorek continued to work in that position until June 29, 1984, when he was discharged.
2. Wzorek had a non-career service status known as Departmental Employment Service ("DES") from March 22, 1977 until December 31, 1983. DES employees consist largely of tradesmen.
3. In December 1983, the Chicago City Council created a probationary period of six months for all DES employees, after which the City would either terminate the employee or advance him or her to full career service status.
4. Dr. Charles A. Pounian was the Commissioner of the Department of Personnel of the City of Chicago at the time the City Council created the DES probationary period. The City vested the Commissioner with the authority to issue personnel rules.
5. On January 10, 1984, Pounian issued a memorandum regarding probationary employees. Under the rules stated in this memorandum, a department head could discharge a probationary employee during the probationary period simply by firing the employee, completing discharge forms, and \*956 forwarding the forms to the Commissioner. The Commissioner would then notify the former employee in writing of the reasons for discharge. The January 1984 memorandum required probationary employees to be given numerical ratings for their performance.
6. On May 3, 1984, the Commissioner of Personnel issued a new memorandum abolishing the probationary ratings and informing department heads that judgment concerning the probationary period would be made thereafter on the basis of new criteria set forth in the memorandum.
7. On October 1, 1983, Eugene M. Barnes became acting Commissioner of the Department of Sewers of the City of Chicago. Barnes's immediate predecessor was Edward Quigley.
8. Before the start of the DES probationary policy, Barnes had a meeting with his department supervisory personnel. Barnes told these supervisors to write probationary employees up or else he would write them up and would get rid of them. John Lucille was one supervisor who rated probationary employees, Wzorek among them. Lucille testified that his rating cards or slips had numbers on top indicating in which ward the employee lived. Lucille testified further that during the probationary period, if someone got transferred into the district, the first thing that was done was to give the person a ward card and let him fill it out. Lucille sent ward cards downtown.
9. Barnes testified that poor work performance and excessive absenteeism during the probationary period were his primary criteria for deciding whether he would deny career service status to a probationary employee. Pounian testified that if a person had completed the probationary period successfully, it would raise question in his mind if a supervisor subsequently recommended dismissal

based on behavior or incidents dating from before the probationary period. While Pounian testified further that a department head could consider incidents that took place prior to the probationary period in reaching a dismissal decision, department heads seldom considered prior actions.

10. Wzorek's first and only interim probationary review was good. He received a numerical rating of 85 out of 100. According to one of Wzorek's supervisors, William Sommerford, Wzorek was a pretty good employee. Commissioner Pounian testified that only under extremely unusual circumstances would a person get an 85 on his performance rating, but then do one of the 27 things listed in the May 3, 1984 directive as grounds for discharge. Pounian stated that someone could have an 85 rating and then commit some act subsequent to that rating to warrant discharge. If someone had committed such an act, city personnel should have noted it on the employee's discharge sheet.

11. On June 29, 1984, Commissioner Barnes wrote to Commissioner Pounian that he intended to discharge Wzorek for poor work performance. On July 6, 1984, Commissioner Pounian wrote to Wzorek that the reason for his discharge was poor performance. Neither Barnes nor Pounian identified excessive absenteeism as a basis for discharging Wzorek.

12. As Commissioner, Barnes had the authority to discharge DES probationary employees. Barnes was not directly involved, however, in the evaluation of employees. He relied instead on the evaluations and reasons of supervisory personnel subordinate to him. Commissioner Barnes authorized Wzorek's discharge upon the recommendation of William Sommerford, a Barnes appointee. Sommerford's name appears on Wzorek's firing slip along with Eugene Barnes's name. Sommerford was the General Superintendent of the Cleaning Division for the Department of Sewers of the City of Chicago.

13. Ned Madia was a foreman of the Cleaning Division for the Department of Sewers for the City of Chicago, and was another of Eugene Wzorek's supervisors. Madia gave Wzorek ratings in the eighties, which were more than acceptable.

14. Approximately 57 probationary career service employees in the Department of Sewers did not successfully complete the \*957 six-month probationary period and were discharged on June 29, 1984. Of these, 29 were from the 27th Ward, the ward of Barnes's predecessor, Quigley.

15. In October 1982, Wzorek and William McDermott delivered a joint campaign contribution of \$1,000 to Richard M. Daley in support of Daley's campaign for Mayor of the City of Chicago. McDermott was subsequently transferred off Wzorek's truck after he gave a statement on the incident to Wzorek's attorney. William Sommerford warned Wzorek not to contribute to Daley's campaign, stating that Wzorek could get in trouble further down the line. Sommerford also told Wzorek, "You better hope the right person is going to win, you only got a one out of three shot."

16. In 1983 Sommerford told Wzorek to "straighten out" in Wzorek's ward, that he wasn't "paying dues." Sommerford told Wzorek that he would have to start paying dues and that "they can get around the Shakman law. They have got real good lawyers downtown." Sommerford further told



Wzorek that "it is still the same game only played a different way." Sommerford told Wzorek that he could get in trouble for giving Daley \$1,000, and that Wzorek would have been better off giving the money to Jane Byrne or Harold Washington because Daley had enemies. Sommerford told Wzorek further, "you might have made a mistake because Jane Byrne is the incumbent." Wzorek at first tried to hide his donation from Sommerford, but later he admitted it. Ronald P. Goorsky was present at this conversation.

\*958 17. Mr. Wasilewski, a person who was an engineer or head of trucks, later threatened Wzorek after a truck broke down. He told him: "You're through. You're going to be fired now. I told Sommerford to write you up and reprimand you." He told Wzorek he would "teach each of those guys a lesson over there at 75th." Wzorek told Wasilewski that he was not responsible for the failure of the truck, as he was ill on the day that the truck broke down.

18. On the day after aldermanic elections in 1984, Ned Madia yelled to Eddie Costa, a maintenance man, "Hey, look what happened in the 12th Ward. One of our guys beat that Polack," referring to Alderman Molaro's defeat of Alderman Majerczyk. Wzorek was from the 12th Ward and was in Madia's presence when Madia made the remark. Madia further stated that Wzorek had "better really shape up," and that Wzorek would have to pay his dues and knock on doors better. At that time Wzorek was not paying his dues because his house had burned down, and he did not have the money. Wzorek said that he would try to catch up on his dues. Wzorek's District Supervisor, Mike DiFacova, said Daley was a punk who was ruining the organization. Madia said that Daley wasn't like his father.

19. Wzorek was told he should take off bumper stickers and campaign buttons supporting Daley. Supporters of Washington and Byrne did not have to take off their campaign paraphernalia. Daley materials were burned in the yard. Sommerford testified that a rule prohibited employees from putting "stickers and things" on city property. If such a rule existed, it was observed in the breach.

20. In a letter to Eugene Barnes dated June 26, 1984, Sommerford requested that Barnes fire Wzorek. Prior to sending the letter, Sommerford asked Lucille, Wzorek's immediate supervisor, if there was anyone he was going to get rid of. Lucille told Sommerford there was no one.

21. Wzorek was never given an exit interview after his discharge. Exit interviews have several purposes, including protecting the City against fraudulent unemployment compensation claims and documenting the reason that a person left the City's employ.

22. The reasons for Wzorek's discharge given at trial were: (1) a violation of a helmet rule, (2) insubordination, (3) causing a clutch to implode on two occasions, and (4) excessive absenteeism.

23. The helmet incident occurred in 1981, three years before Wzorek's discharge. Wzorek had been inside a truck and the helmet had been stolen. Wzorek received a written reprimand for going without a helmet.

24. The insubordination incident stemmed from Wzorek's leaving work on account of illness. This occurred in June 1982. The City docked Wzorek fourteen hours on account of his supposed failure to follow orders, which in any event was not a clear violation of City rules.

25. The imploding clutch incidents occurred years prior to Wzorek's discharge. No evidence demonstrated or supported the conclusion that the damage to a truck was due to negligence on Wzorek's part.

\*959 26. During his probationary period Wzorek was absent without pay from work a total of 7¼ days. According to Commissioner Barnes, excessive absenteeism such as would warrant discharge of a probationary employee in the Department of Sewers was absence without pay for ten or more days.

27. Wzorek received \$6,118 in unemployment compensation from the Illinois Department of Labor, Bureau of Employment Security, as a result of his termination.

28. Pursuant to Ill.Rev.Stat. ch. 48, ¶ 555 B (Smith-Hurd Ann.1987), the City of Chicago reimburses the State of Illinois for all unemployment benefits paid to former City employees. This method of reimbursement was in effect while Wzorek received the unemployment benefits described above. The City of Chicago reimbursed the State of Illinois \$6,118.

29. Upon termination from City employment, Wzorek was entitled to continue coverage under the medical plan in which he was enrolled during the course of his employment with the City. Wzorek did not elect to continue his medical coverage subsequent to his termination because he could not afford it.

30. Wzorek did not obtain substitute health and/or medical insurance subsequent to his termination, as he had no income. He chose not to apply for disability benefits with the Social Security Administration.

31. Wzorek has not actively sought employment since 1986, nor was he capable of doing so at the time of trial.

32. In the opinion of a court-appointed psychiatrist, Dr. Jan Fawcett, Wzorek was not capable of working in any capacity for approximately six to twelve months at the time of trial. Dr. Fawcett further suggested that the City's termination of Wzorek was the cause of Wzorek's incapacity, which is emotional in nature. Dr. Fawcett's testimony was sound, professional, and credible in most respects on the information available. The court observes further that after his termination, Wzorek was not emotionally capable of doing what he could have done before he was terminated.

33. Had the City of Chicago retained Wzorek, it would have paid him \$132,825.33 in wages and salary. He would have earned \$13,833.35 in interest. He has incurred \$3,750 in medical expenses and \$870 in prescriptions since his departure.

## **CONCLUSIONS OF LAW**

This court has jurisdiction over this cause and the parties pursuant to 28 U.S.C. § 1331 (1982), and by reason of the consent decree entered in 1972 in Shakman v. Democratic Organization of Cook Cty., 481 F.Supp. 1315, 1356, 1358–59 (N.D.Ill.1979). Wzorek has petitioned this court for relief for a violation of that decree. To establish a violation, Wzorek must establish that he is a person protected under the decree, that he engaged in protected political associations, that he was discharged, and that a motivating factor in the decision to fire him was his political associations. See id. at 1358; Shakman v. Democratic Organization of Cook Cty., 533 F.2d 344, 351 (7th Cir.1976). Wzorek must establish these propositions by clear and convincing evidence. Id.

There is no dispute that the Shakman decree protected Wzorek and that he was discharged. There is little question as well that Wzorek engaged in protected political acts of association: Wzorek supported Richard M. Daley, financially and otherwise, in his campaign for Mayor of the City of Chicago. The key question is whether these acts were a motivating factor in his discharge. For this court to grant Wzorek relief, Wzorek must demonstrate that but for his association, he would not have been terminated. See Mt. Healthy City Board of Ed. v. Doyle, 429 U.S. 274, 285–87, 97 S.Ct. 568, 575–76, 50 L.Ed.2d 471 (1977).

1 This court concludes that Wzorek has demonstrated by clear and convincing evidence that his political associations were a motivating factor in his discharge. Wzorek's supervisors, Sommerford, Wasilewski, and Madia, wished to discharge Wzorek principally for his political activities. They recommended discharge to Barnes, \*960 who had the authority to terminate Wzorek. Since the court can attribute the improper motivation of persons recommending a discharge to the person who carries out the decision pro forma, see Oxman v. WLS-TV, 846 F.2d 448, 456–57 (7th Cir.1988), this court holds that the City discharged Wzorek for improper political reasons. Through the pen of a misinformed Barnes the City thus violated the Shakman decree.

As a penalty for violating the Shakman decree, the City properly owes Wzorek back pay in the amount of \$132,825.33. The court will offset against this amount the unemployment compensation received by Wzorek, \$6,118, as the City reimbursed the State of Illinois for those benefits. See Olshock v. Village of Skokie, 541 F.2d 1254, 1260 (7th Cir.1976) (back pay awards within court's discretion); Nottleson v. Smith Steel Wkrs. D.A.L.U. 19806, 643 F.2d 445, 456 (7th Cir.1981) (proper to offset back pay award by amount liable party contributed to worker's unemployment compensation fund); Syvock v. Milwaukee Boiler Mfg. Co., Inc., 665 F.2d 149, 161–62 (7th Cir.1981) (offsetting unemployment compensation contributions prevents double recovery).

2 Wzorek requests that this court give him pre-judgment interest on the award of back pay. Approval of such a request lies within this court's discretion. The Seventh Circuit has suggested that the courts consider in this vein the amount of evidence in support of the finding of liability, the degree to which the liable party acted willfully, and the injured party's attempts to mitigate his damages. See id. at 162 (presenting equitable considerations in pre-judgment interest decisions rendered under the

Age Discrimination in Employment Act ("ADEA"), 29 U.S.C. §§ 621 et seq. (1982)). As noted above, the evidence supporting the finding that the City violated the Shakman decree was clear and convincing. Wzorek did not attempt to mitigate his damages, but this failure was understandable: he was and continues to be an emotional wreck. The court thus holds that an award of pre-judgment interest in the amount of \$13,833.35 is appropriate in this case.

3 The wilfulness of the City's violation of the Shakman decree will also result in an award to Wzorek of \$3,750 in medical expenses and \$870 in prescriptions related to treatment of his emotional problems. This is because the City's termination of Wzorek precipitated the emotional problems which Wzorek suffers. While Judge Bernard Decker ruled earlier in this case that Wzorek could not recover damages as a matter of course for mental and emotional distress, he expressly relied on authorities submitted to him by the City that allow such recovery when the party who violates a decree of the court acts deliberately or maliciously. See, for example, Thompson v. Johnson, 410 F.Supp. 633, 643 (E.D.Pa.1976), affirmed without opinion, 556 F.2d 568 (3d Cir.1977) (deliberate and malicious conduct resulting in mental anguish can be considered in assessing punishment for violation of consent decree). The actions of Wzorek's supervisors amount to such deliberate and malicious conduct that this court can, and will, assess damages for the results of that conduct. Wzorek asks this court to impose one further sanction on the City for its violation of the Shakman decree: reinstatement to his former position. The Seventh Circuit has suggested that reinstatement, like other equitable remedies, is permitted in cases involving unlawful or improper termination. The decision whether to reinstate a discharged employee lies within the court's discretion, based on its assessment of the facts of each case. See Coston v. Plitt Theatres, Inc., 831 F.2d 1321, 1330 (7th Cir.1987) (discussing equitable remedy of reinstatement available under ADEA); McNeil v. Economics Laboratory, Inc., 800 F.2d 111, 118-19 (7th Cir.1986) (similar discussion). The aggrieved person must be presently qualified, however, for the position he or she seeks. See Franks v. Bowman Transportation Co., 424 U.S. 747, 772 n. 31, 96 S.Ct. 1251, 1268 n. 31, 47 L.Ed.2d 444 (1976) (present qualification needed for equitable reinstatement under Title VII of the Civil Rights Act of 1964, as \*961 amended, 42 U.S.C. §§ 2000e et seq. (1982)); Kamberos v. GTE Automatic Elec., Inc., 603 F.2d 598, 603 (7th Cir.1979) (same).

4 As this court found above, Wzorek is presently incapable of working. The court thus will not reinstate him to his former position at this time. In the opinion of Dr. Fawcett, Wzorek could recover from his emotional infirmities, and thereby resume work, within the year. In the interim, the court will award Wzorek front pay and benefits. See McNeil, 800 F.2d at 118 (front pay appropriate where aggrieved party has no reasonable prospect of obtaining work, or where award period is relatively short). The court will decide in supplemental proceedings within a reasonable time after November 1, 1989 whether Wzorek can or should be reinstated, or if some other form of prospective relief is

appropriate. The court reminds Wzorek that if he is capable of resuming work sooner, he has a duty to make reasonable efforts to mitigate his damages. See *id.* Despite his emotional fragility, and largely without the aid of learned counsel, Eugene Wzorek has prevailed against the sinister forces that precipitated his illegal termination. Wzorek is indeed the worse for his experience, although he should take pride in his efforts before this court. His case is an example of how the judicial system helps protect important political freedoms, albeit retrospectively. This court enters judgment in favor of Eugene Wzorek. The court awards him back pay, pre-judgment interest, and medical and prescription expenses in the amount of \$145,160.68. The court further awards Wzorek front pay and benefits. The court will treat Wzorek's request for reinstatement in supplemental proceedings.

## All Citations

708 F.Supp. 954

## Footnotes

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In a response to Wzorek's proposed findings of fact, the City suggests that Goorsky was incredible. This stems from an incident that occurred after this court dismissed Goorsky as a witness. The following exchange took place shortly after the witness following Goorsky took the stand:

MR. EX: Your Honor, I am very sorry to interrupt, but I have to report something I feel I have an obligation to put on the record.

Mr. Sommerford, who is a witness that was requested by Mr. Wzorek, is sitting outside. It has been brought to my attention that a series of harassing and threatening comments have been made to him by Mr. Goorski.

MR. WZOREK: I wasn't out there, your Honor.

MR. EX: Very improper, and I would move to exclude Mr. Goorski from the courtroom and from this floor.

THE COURT: Well, he was excused.

MR. WZOREK: Yes, he can go.

THE COURT: As a witness, but I can't take just a bare allegation like that. Do you want to have a hearing on it? I will be glad to. Did you hear it, sir?

MR. EX: I did not personally hear it. He just reported to me. I believe, Mary, did you hear?

MS. SMITH: We were in the courtroom, your Honor. Mr. Goorski finished testifying. He left the courtroom, saw Mr. Sommerford sitting outside the courtroom and then made the comment to him that he made.

THE COURT: Mr. Sommerford, what comments did he make?

MR. WZOREK: He is not here.

MR. EX: He is sitting outside.

THE COURT: Bring him in.

MR. WZOREK: I wasn't out there. I don't know.

THE COURT: Don't worry about it. Bring Mr. Sommerford up to the lectern. I would like to speak to him, and you, Mr. Ex.

Mr. Sommerford, Mr. Ex says that some comment was made to you that you didn't like. Tell me what was said.

MR. SOMMERFORD: Yes. A gentleman came out there and called me a dog, you ugly sonofabitch.

THE COURT: Called you a what?

MR. GOORSKI: Your Honor—

THE COURT: Just a minute. Called you a what?

MR. SOMMERFORD: A dog, ugly sonofabitch.

THE COURT: Is that it?

MR. SOMMERFORD: And he came out there the last time, and the first time I came in here, I never seen him to know him, he said, you no good sonofabitch. This gentleman here.

THE COURT: Anything else?

MR. SOMMERFORD: That's all he said.

THE COURT: Thank you, sir. You may be excused.

Mr. Goorski, you want to say anything?

MR. GOORSKI: Your Honor, I don't even know that was Mr. Sommerford. I never met him before.

MS. SMITH: If you recall Mr. Goorski's testimony he was present at the conversation with Mr. Sommerford.

MR. GOORSKI: He had more hair.

MS. SMITH: Mr. Goorski made a slashing gesture across his throat. Obviously if he can testify to a conversation with Mr. Sommerford and statements that Mr. Sommerford made back in 1982, he certainly knows this man.

MR. GOORSKI: That is six years later.

MR. WZOREK: I object to this.

THE COURT: Be quiet everybody. Thank you, Mr. Sommerford. You are excused.

THE COURT: Mr. Goorski, you are now under instructions, I am not even going to inquire about anything else, not to communicate with anybody at all.

Is there any possibility Mr. Goorski is going to be recalled as a witness in this case?

MR. WZOREK: Not that I know of.

THE COURT: If there is, we probably shouldn't have him here in the courtroom. Can I suggest to you, Mr. Goorski, we won't need you more today, and it might be a good idea since that fellow is so irate, you might absent yourself, and then you can call Mr. Wzorek tonight and see if he needs you tomorrow.

MR. GOORSKI: All right. Thank you, Your Honor.

THE COURT: But don't discuss your testimony with anybody. Thank you.

MR. WZOREK: I forgot where I was.

THE COURT: Help like that you don't need, Mr. Wzorek.

What the court fails to believe in this instance was Goorsky's claim that he had never seen Sommerford before. This court will not prefer Goorsky's unsworn response to the court's inquiry into his ungentlemanly conduct over his sworn testimony, which the City subjected to cross-examination. Nothing elicited on the stand suggests to this court that Goorsky would have cussed at someone he had not known.

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## **Attachment C:**

**Transcript of proceedings,  
#84-CV-9978  
16 August 1989**

**Attachment C: Judge Duff, Notes on Transcript of proceedings,  
#84-CV-9978, 16 Aug 1989:  
as per the Nature of the case and ruling**

Page 4, lines 16 through 19 – Cites Equity proceeding, not “legal (statutory) proceeding”.

Page 4, line 20 through page 5, line 2 – Duff cites that Defendant (City of Chicago et al) essentially perjuring self in USCOA Seventh Circuit proceedings; further asserts Equity.

Page 5, lines 1 and 2 – Duff cites “the City (Defendant) caused this problem,” that of direct and official interference in an equitable final decision, based upon substantial misrepresentation of established facts during later court proceedings. [Of Special Note: It is precisely here, that Justice Duff stops short of declaring the City of Chicago's (Defendant's) prior appeal in Seventh Circuit as out-of-order or fraudulent in its nature and effect, in apparent deference to Seventh Circuit justices, whom he may believe at this time had been baffled or otherwise fooled by Defendant's deliberate and deceptive actions in those proceedings.]

Page 5, lines 3 through 5 – Duff reiterates the nature of Equity in prior decisions, as regards Wzorek v City of Chicago, explicitly ruling out statutory concerns.

Page 5, lines 6 through 8 – Duff again cites Equity.

Page 5, lines 10 through 18 – Duff states that he heard the doctor's testimony “last year,” and comments of Seventh Circuit's findings.

Page 5, lines 14 through 18 – Duff questions the grounds of Seventh Circuit's prior decision, suggesting misrepresentation by Defendant (City of Chicago et al).

Page 5, lines 19 through 25 – Duff notes the unorthodox procedure of Defendant's (City of Chicago et al) appealing an Equitable ruling via misdirection/misrepresentation in hearings set purely in statutory law, further citing the nature of denial of means of payment for Petitioner Eugene Wzorek's court-ordered medically necessary treatment as a deliberate act by Defendant (City of Chicago et al), in direct defiance of Justice Duff's prior findings and ruling; Duff reiterates the Equitable nature of the case.

Page 6, lines 1 through 6 – Duff's reference to Defendant's (City of Chicago et al) intentions, should Petitioner (Eugene Wzorek) have been reinstated to city employ; as known in proceedings and testimony, Defendant (City of Chicago et al) knew that Petitioner Eugene Wzorek was on required psychiatric medications, and thus could have fired Wzorek after reinstatement due to the presence of prescribed drugs in his system. Justice Duff cites exception to this notion.

Page 6, lines 7 through 10 – Justice Duff cites hindsight, and his frustrations with Defendant's (City of Chicago et al) actions, as well as the actions of the USCOA Seventh Circuit, whom in it's "superior knowledge", saw fit to hear an equity decision on appeal in statutory basis.

Page 7, lines 4 though 12 – Duff once again cites the Equity nature of the case, these hearings, and his decisions.

Page 7, line 19 through page 8, line 15 – this exchange once again demonstrates Defendant's (intentional?) misunderstanding of Equity law. Duff essentially cites Precedent in Eugene Wzorek v City of Chicago et al (#84-CV-9978), due to the fact that it is the first case of it's kind regarding Shakman which was heard in Equity; it is also the only case heard in Equity, as per the entire history of the Shakman Consent Decree.

Page 8, lines 19 though 23 – Duff clearly cites that this is not Dr. Jan Fawcett's first sworn court appearance, and alludes to prior appearance/s (01 and 02 November, 1988), transcripts of which have never been made unavailable to Petitioner Wzorek.

Dr. Jan Fawcett's sworn medical testimony follows; this represents the third time Dr. Fawcett has testified in this case, the first two instances being 01 and 02 November 1988 - no record of which has ever been made available to Plaintiff Eugene Wzorek, or placed in the public record, yet Dr. Fawcett's prior testimony is clearly alluded to in this transcript by Justice Duff on page 8, lines 19 through 23, court transcript of 18 August 1989 {further tampering is evidenced by the fact that this transcript itself "exists" historically in at least 3 completely different variants (please see Petition for Emergency Motion: Writ of Certiorari, #84-CV-9978 for fuller details on that matter)}.

**Attachment C: Further Notes on Transcript of proceedings,  
#84-CV-9978, 16 Aug 1989:  
as per Medical Testimony of Court Appointed Expert Witness,  
Dr. Jan Fawcett, and court findings**

**As regards Defendant's machinations against Plaintiff, and Judge Duff's resulting astonishment; but also as pertains to PRECONDITIONS for Wzorek's reinstatement into the workforce, based upon health considerations and court determined medically necessary care:**

transcript pg. 4, lines 12-19:

“Mr. Gubbins, I absolutely understand, and I am nonplussed by the action of the city, and I am humbly astonished at the action of the Seventh Circuit. In their wisdom, they have put Mr. Wzorek in a position where he cannot have the money to get the psychiatric care that I said was precedent [sic] to the decision to discover whether or not he [Wzorek] should be able to be reinstated to his job. And I frankly don't know how to handle it.”

After a brief discussion of Defendant's reluctance to pay it's share of Court ordered medical treatment, transcript continues:

**transcript pg. 5, lines 17-20:**

[Judge Duff] “Now in the meantime I take it Mr. Wzorek is not getting any psychiatric care of any kind.”

[Gubbins, for Wzorek] “No. none.”

[Defendant does not object to this statement.]

**Wzorek's attorney, Gubbins, continues, pg. 6, lines 2-6:**

“He [Wzorek] has been to a number of doctors, and at a certain point they drop him, Your Honor, because he just doesn't have the money, and he can't borrow any more. Everybody that has loaned him {Wzorek} money in the past is tapped out.”

[Defendant does not object to this statement.]

**Duff continues, pg. 6, lines 7-24:**

“The Seventh Circuit certainly has a right to decide that my opinion wasn't final, but I don't really understand how they deal with the equitable power of the Court to fashion a remedy under the circumstances, and I'm sure they will tell us, and we'll get some guidance.

“In the meantime, you're [Wzorek] in a terrible situation. So it seems to me that the only answer is to advance the matter for an immediate hearing upon reinstating it.

“Now, if the Seventh Circuit doesn't want us to do that, they have left me without any guidance, and I don't understand what they're doing, so I can only function as best I can under the circumstances, and under the dire personal tragedy that Mr. Wzorek is functioning, which I have ruled was caused in large effect by the city.”

“Now, if they [Defendant] want to appeal that, that's different. They are not appealing that. They are only appealing whether they should pay.”

**Mr. Ex [representing Defendant] counters with the notion of “front pay” as being a form of finality in the decision, and this exchange follows, pg. 7, lines 13 through 18:**

“I understand that, Your Honor, and you're right to the extent that it's an analogous term, but it is also my understanding that in other analogous situations when reinstatement is an alternative remedy, if

that remedy is not available then the equitable discretion of the Court allows as an alternative the front pay.”

**To which, Judge Duff replies, page 7, line 22 through page 8, line 3:**

“I don't know of any equitable rule that says I have to have any reasonable limitation, except the time at which the man should retire. If he can't work for the rest of his life because of the City of Chicago, then as far as I'm concerned he should be paid for the rest of his life by the City of Chicago. And that doesn't meet your case law on front pay. Okay.”

**Mr. Ex counters, page 8, lines 4 and 5:**

“Your Honor, all I can say is that based on what the Seventh Circuit has held is that it's not --”

**Judge Duff clarifies, page 8, lines 6 through 10:**

“You [Defendant] didn't give me a single case where the lower court's ruling was equitable. You gave me all cases where the lower court's ruling was based on statutory understandings of front pay under some premise of law, and if you can think of some equity case, then cite it for me.”

**Judge Duff reaffirms the Equitable nature of Wzorek hearing, decision and subsequent proceedings, page 9, lines 13 through 15:**

“I told you folks [Defendant] for years, for over a year now, precisely how it is being approached, but nobody seems to be listening.

“Let's get going.”

**Judge Duff calls Dr. Jan Fawcett, court appointed medical witness, and apologizes for Dr. Fawcett's not having received compensation for his time in the intervening year – page 8, lines 19-23.**

**Dr. Fawcett replies as to his mandate, page 9, lines 16 through 21:**

“Generally the mandate was to determine his current condition as of this time, whether it's changed since my last examination, with particular relevance to the question of whether he [Wzorek] is able to work, and if he's not, what it would take to get him back to a functioning level. That's as I understand it.”

**Dr. Fawcett gives his medical opinion, wherein he believe Eugene Wzorek to be suffering from depression, but also agoraphobia, and that Wzorek suffers from these two conditions more or less continuously, page 13, line 13 through page 14, line 5.**

**Based on that assessment, Dr. Fawcett recommends that Wzorek should receive more intensive medication, but also a period of hospitalization for the more insidious effects of these illnesses, followed by a period of outpatient therapy, total span of which might entail from one to two years, page 14, line 13 through page 15, line 14.**

**Dr. Fawcett concludes that treatment must be imminent and comprehensive in order to be effective for Wzorek, page 17, lines 7 though 21:**

“Well, I guess I feel that valuable time is lost the longer he's [Wzorek] disabled, and he's reinforced by these withdrawing behaviors and belief that he's in danger. The more he withdraws he doesn't test that hypothesis, he doesn't go out to see that he's free to go out and he's not in danger, he's going to be more and more convinced of this and more and more isolated, and he will lose his skills further and further, both socially and work skills, and it will become progressively more of a barrier for

him to go out and function, and he will become more fixed and chronic in this case.

"I think he's already lost ground in this last year by not having a really effective treatment program, and I'm warning if this isn't done, his rehabilitation, the cost is going to skyrocket each month he's not getting the active treatment."

**Dr. Fawcett gives an estimate at which point in time Wzorek's condition may become chronic and prolonged, as not being afforded appropriate medical attention, page 18, lines 2 through 6:**

"That's a very gross estimate, and I'll give you my best, anyone could disagree with it; but I would say if we're sitting here a year from now having the same conversation, my conclusion might well be that he [Wzorek] is chronically disabled, that's it."

**Dr. Fawcett, under questioning by Mr. Ex [Defendant], comments on possible effects to Wzorek's family, page 32, lines 11 through 17:**

"Well, I don't know too much about the family situation and what this has done with regard to his marriage and his family.

"It might be necessary to have them see a counselor for family therapy at this point. I can't determine that at this point, but it certainly might be possible."

**Dr. Fawcett testifies that in his medical opinion, Wzorek has been fixed within this medical situation since approximately 1985, page 34, lines 5 through 14.**

**Dr. Fawcett testifies that while ill and suffering, Wzorek doesn't meet clinical guidelines of presenting a "danger to self or others", and so does not warrant grounds for compulsory, involuntary hospitalization, page 37, lines 13 through 16.**

**Judge Duff interrupts Mr. Ex's questioning, as the invective that damages are being discussed with the medical practitioner, not healthcare options, page 44, lines 19 through 25:**

"If you're going to come in with some testimony in this respect, or if Mr. Gubbins is, fine. Now you're talking damages, you're not talking psychiatric care, and the man [Dr. Fawcett] came on the stand to talk about psychiatric care.

"If you have something within that scope, though, go ahead."

**Dr. Fawcett responds to questioning regarding Wzorek's potential for positive prognosis via mere cessation of litigation, page 47, lines 14 through 19:**

"I think it would have a positive effect. It wouldn't be enough – he [Wzorek] wouldn't just revert to his previous self. Because – if this ended and he were given some award or some kind of judgement, I have no idea whether that's being considered, I might say, but if he were, I don't think that would solve his [Wzorek's] problem.

"I think it would help, I think it would be a positive force in the resolution of his problem."

**Gubbins ask Dr. Fawcett if it is a reasonable assumption for someone in Wzorek's condition ("non-functional both socially and economically") to be able of his own accord to find treatment, assemble doctors, clinics, program and funding sources, without needing extensive outside help and expertise, to which the witness [Dr. Fawcett] concludes this is an unreasonable expectation for someone in Wzorek's position, page 52, lines 14 through 22.**

**Dr. Fawcett's concluding statements to the court, page 56, lines 6 through 19:**

"Well, I think I have inferred, in my response to the questions, but I feel that everybody, the City, the patient, would be served by getting him adequate treatment as soon as possible.

| “I think that whatever damage has been incurred would be minimized, and I think that he would be much better off to get this behind him and going, and that's the only – “

[Judge Duff asks if Dr. Fawcett thinks Wzorek will participate.]

“I think that he'll try and avoid some of the very things that he – that he needs to do initially, but if the treatment is fashioned correctly, I think he'll participate, if he can relate to the people treating him, sure.”

Full Transcript of 16 August 1989 follows this page.

This is the “most reasonable” and accurate copy of that transcript which has been made available, to date.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

EUGENE WZOREK, )  
 )  
Plaintiff; )  
 )  
vs. ) No. 84 C 9978  
 )  
CITY OF CHICAGO, an Illinois ) Chicago, Illinois  
municipal corporation, ) August 16, 1989  
Defendant. ) 11:00 a.m.

TRANSCRIPT OF PROCEEDINGS  
BEFORE THE HONORABLE BRIAN BARNETT DUFF

APPEARANCES:

For the Plaintiff: Mr. John L. Gubbins  
542 South Dearborn  
Suite 610  
Chicago, Illinois 60605

For the Defendants: Mr. Charles E. Ex  
Ms. Mary L. Smith  
Assistant Corporation Counsel  
180 North LaSalle Street  
Chicago, Illinois

1 THE CLERK: 84 C 9978, Wzorek vs. City of Chicago  
2 for hearing.

3 MR. GUBBINS: John Gubbins on behalf of the  
4 Plaintiff, Mr. Wzorek.

5 MS. SMITH: Mary Smith on behalf of the defendant.

6 MR. EX: Charles Ex on behalf of the defendant.

7 THE COURT: Mr. Ex, it looks like you collected a  
8 pretty good tan this summer.

9 We have a time problem. I have a 12:00  
10 o'clock meeting that I have to leave for in half an hour, and  
11 we had provided you with a lot more time than that, and we  
12 were also supposed to finish this morning, so we may not be  
13 able to. We'll have to see how we do, and adjust as  
14 necessary.

15 I have an awful tough schedule this week,  
16 since I'm in the middle of a bench trial, and I have a  
17 hearing on sanity tomorrow. So let's do the best we can.

18 I understand that you do have some  
19 stipulations on economics.

20 MR. EX: I think that it may do away with the need  
21 to put on a significant number of the witnesses.

22 THE COURT: Yes, that's great.

23 MR. EX: And of course the motion to bar, which was  
24 filed.

25 THE COURT: Yes. That saves us lots of time.



1 MR. GUBBINS: I'll read them in, and then we can  
2 reduce them to writing at some point.

3 THE COURT: Go ahead.

4 MR. GUBBINS: There is a period of time where  
5 Mr. Wzorek went without wages from the City from the date of  
6 your order, March 20th, to today, and we have stipulated that  
7 that amount, if he had been paid, would be \$14,500.

8 We expect Dr. Fawcett to testify that it is  
9 going to take six to twelve months to rehabilitate Mr. Wzorek  
10 so that he can get back into the work force.

11 Since he will be unemployed for that year,  
12 we would stipulate -- well, six to twelve months. What we  
13 will stipulate is that if he was unpaid for the following  
14 year, during the period he would be undergoing therapy, it  
15 would be \$33,518.17.

16 Depending upon how the Court rules on the  
17 front pay issue and determines six, twelve months, seven  
18 months, eight months, roughly the Court can work with the  
19 \$33,000 figure divided by twelve and award as many months, if  
20 it awards any front payment. So we're giving you a twelve  
21 month figure of 33,000 some odd dollars for the front pay  
22 running forward from today for the next year.

23 MR. EX: It's our understanding that this hearing is  
24 to put forth the evidence in front of you to make a decision  
25 whether or not you want to order reinstatement or some

1 alternative remedy, which we assume would be a front pay  
2 award, and Mr. Gubbins and I have agreed that based on  
3 Dr. Fawcett's findings that it appears that no more than a  
4 one-year front pay remedy would be appropriate.

5 So that if that would be the remedy that you  
6 would choose to award --

7 THE COURT: I wouldn't say that Dr. Fawcett's  
8 findings of last year were either totally accepted by the  
9 Court or put into evidence or accepted by the Court in the  
10 same fashion that you're both referring to it.

11 MR. EX: Okay. I guess, Mr. Gubbins and I have  
12 looked at it, in our interpretation -- I don't want to speak  
13 for the Court.

14 THE COURT: I'll tell you if it helps you in your  
15 thinking.

16 This is an equity proceeding, not a legal  
17 proceeding. Judge Bua made a decision on Shakman which was  
18 injunctive in its nature, it was equitable, and it was to be  
19 continuing, and we're proceeding under that ruling. Okay.

20 Now, the Seventh Circuit chose, because the  
21 City decided to go upstairs and say it wasn't a final order,  
22 to say that there was no equitable exercise in it. I don't  
23 know how that happened, because I don't know what arguments  
24 were made to the Seventh Circuit, but if you avoided talking  
25 about that, the nature of the ruling, shame on you, as far as

1 I'm concerned. It was my thought, I'll tell you frankly,  
2 that the City caused this problem.

3 You keep talking about front pay. Front pay  
4 is a legal doctrine that comes out of legal cases and  
5 statutory premise. This case does not.

6 Now, we can talk about front pay if you  
7 want, in terms of standards, analogous treatments and so  
8 forth. This is an equitable case. All right?

9 MR. GUBBINS: Understood, Your Honor.

10 THE COURT: Now, last year I listened to the  
11 Doctor's feelings, I watched the man, Wzorek, function in  
12 this courtroom in any number of ways for a long time.  
13 Intentionally.

14 I agreed with much of what the Doctor said,  
15 and I tried to fashion an equitable solution, which the  
16 Seventh Circuit chose to say was not a final order. Again, I  
17 don't know what they heard or why they did what they did, but  
18 they did say it wasn't final.

19 In the meantime, because of the City's  
20 actions, the man hasn't been able to afford any psychiatric  
21 care, totally negating the equitable intention of my ruling.  
22 Then nobody came in to get it modified or considered or ruled  
23 on, which I couldn't understand, either. So I am a little  
24 bit nonplussed, still, but I am approaching this now, as I  
25 did in the past, as an equitable matter.

1                   The City, in my opinion, caused Mr. Wzorek's  
2     problem. Okay. I've said as much. Mr. Gubbins said when he  
3     came into the case, Judge, if you reinstate Mr. Wzorek they  
4     will give him a urine test, and they will kick him out.  
5     Well, I said we're not going to let that happen. That's the  
6     basis on which we have proceeded.

7                   If I had thought that he wasn't going to  
8     have any benefits to pay for any psychiatric care, I would  
9     have reinstated him immediately and then tried to fashion  
10    some way that he could work without a urine test.

11                  But the man hasn't had any -- he only had  
12    one visit to the doctor, as far as I can tell, in the last  
13    almost a year. Since what, last fall? I think that's almost  
14    unconscionable, that a man who needs psychiatric care can't  
15    even have it, all under the equity aegis of this Court, and  
16    all because of the functions of you lawyers and the superior  
17    knowledge of the Seventh Circuit. The Sheriff of Nottingham  
18    could not fashion a better result.

19                  Now, we're here today to find out are there  
20    any facts upon which I can function in order to come up with  
21    an equitable solution. That's our purpose.

22                  MR. GUBBINS: Your Honor, I think the best thing is  
23    to try and get Dr. Fawcett on and off today.

24                  THE COURT: Put him on.

25                  MR. EX: Your Honor, before we put on Dr. Fawcett, I

1 want to try to clarify something from your remarks, and that  
2 is if you intend to award some amount of front pay that would  
3 go beyond --

4 THE COURT: I'm not even calling it front pay,  
5 Counsel. You people keep calling it front pay. Front pay is  
6 a legal doctrine that comes to us out of legal cases. That  
7 is not that kind of a fashion. Maybe they are analogous,  
8 maybe we can talk about paying money in the future and you  
9 want to call it front pay, but don't use front pay to me in  
10 the same fashion that it is fashioned under the statutory  
11 remedies, because we are not dealing with a statutory remedy,  
12 we're dealing with an equity remedy.

13 MR. EX: I understand that, Your Honor, and you're  
14 right to the extent that it is an analogous term, but it is  
15 also my understanding that in other analogous situations when  
16 reinstatement is an alternative remedy, if that remedy is not  
17 available then the equitable discretion of the Court allows  
18 as an alternative the front pay.

19 THE COURT: Your front pay cases suggest a  
20 reasonable limitation on the end of it.

21 MR. EX: Correct.

22 THE COURT: I don't know of any equitable rule that  
23 says I have to have any reasonable limitation, except the  
24 time at which the man should retire. If he can't work for  
25 the rest of his life because of the City of Chicago, then as

1 far as I'm concerned he should be paid for the rest of his  
2 life by the City of Chicago. And that doesn't meet your case  
3 law on front pay. Okay.

4 MR. EX: Your Honor, all I can say is that based on  
5 what the Seventh Circuit has held is that it's not --

6 THE COURT: You didn't give me a single case where  
7 the lower court's ruling was equitable. You gave me all  
8 cases where the lower court's ruling was based on statutory  
9 understandings of front pay under some premise of law, and if  
10 you can think of some equity case, then cite it for me.

11 MR. EX: Your Honor, we'll attempt to rethink it  
12 along the lines that you are articulating.

13 THE COURT: I told you folks for years, for over a  
14 year now, precisely how it was being approached, but nobody  
15 seems to be listening.

16 Let's get going.

17 (Brief pause.)

18 THE COURT: Be seated, Doctor.

19 Before you start, Mr. Gubbins; Doctor, the  
20 Court and the lawyers, in my opinion, owe you an apology.  
21 You've testified here, and nobody even paid you for a year.  
22 I think that's disgraceful, but we will make sure that  
23 doesn't happen again.

24 DR. JAN FAWCETT, PLAINTIFF'S WITNESS SWORN

25 DIRECT EXAMINATION

1 BY MR. GUBBINS:

2 Q. Are you the same Dr. Fawcett that testified here in  
3 November of 1988?

4 A. Materially, yes.

5 Q. Okay.

6 THE COURT: Or substantially.

7 THE WITNESS: Substantially, yes.

8 BY MR. GUBBINS:

9 Q. Recently you were asked to examine Mr. Wzorek again.

10 A. Yes.

11 Q. And prior to examining Mr. Wzorek again, you had  
12 conversations with Mr. Ex and myself concerning --

13 A. Yes, we had a conference calls, rights.

14 Q. Do you recollect the questions that were being posed to  
15 you to examine Mr. Wzorek on?

16 A. Generally the mandate was to determine his current  
17 condition as of this time, whether it's changed since my last  
18 examination, with particular relevance to the question of  
19 whether he is able to work, and if he's not, what it would  
20 take to get him back to a functioning level. That's as I  
21 understand it.

22 Q. Okay. And did you at some point put together a report  
23 based on your -- did you examine Mr. Wzorek?

24 A. Yes, I did, on the 8th of August.

25 Q. Did you at some point draft a report based on your

1 examination of Mr. Wzorek?

2 A. Yes, I did.

3 Q. I'm going to hand you what we have previously marked  
4 Petitioner's Exhibit 1, and it is a letter addressed to Judge  
5 Duff.

6 MR. GUBBINS: Judge, I don't know, would you care to  
7 follow along with a copy?

8 THE COURT: I would be delighted. I wish you had  
9 showed it to me yesterday.

10 You would really be nice to give me a chance  
11 to read things in advance.

12 MR. GUBBINS: We have a stipulation with counsel  
13 that this letter can be made part of the evidence, the letter  
14 being to Your Honor, and with the Doctor's findings and  
15 conclusions.

16 THE COURT: I don't know why you didn't send this to  
17 me before today.

18 MR. GUBBINS: Your Honor, I thought since it was  
19 addressed to you, it had gone out to you in the mail, and I  
20 apologize.

21 THE COURT: It probably is in the mail.

22 MR. GUBBINS: It probably just hasn't reached the  
23 judge yet.

24 THE COURT: Okay.

25 BY MR. GUBBINS:



1 Q. During your examination of Mr. Wzorek, did you talk to  
2 him and interview him?

3 A. Yes, I did.

4 Q. How long did that interview take, approximately?

5 A. It was about an hour.

6 Q. Did he report anything of significance to you in your  
7 role as a psychiatrist?

8 A. Well, he reported a lot of symptoms of anxiety, some  
9 symptoms which I refer to as previous depression, although I  
10 think his depression may be a slight bit better than it was  
11 when I first saw him roughly a year ago, but he has a lot of  
12 anxiety symptoms, particularly related to going outside, a  
13 lot of symptoms that I would refer to as agoraphobia,  
14 avoidance symptoms, fears of going places by himself, which I  
15 feel renders him essentially non-functional at this point.

16 Q. Did you interview anybody else at the time you  
17 interviewed Mr. Wzorek?

18 A. Well, he was accompanied by an uncle, and since I wanted  
19 to get as much corroborating information as I can, I  
20 interviewed his uncle at my request. He was a little  
21 reluctant but came into my office, and I did get some  
22 information from him.

23 Q. And have you put in your report or drafted as part of  
24 your report your interview with Mr. Wzorek and his uncle?

25 A. Yes.

1 Q. Okay. What of significance did the uncle report to you?

2 A. Well, he more or less corroborated some of the  
3 information I had gotten concerning the limitation of  
4 function, social function particularly, that Mr. Wzorek  
5 claimed.

6 I asked him the questions in a little  
7 different ways to try and test whether I was getting true  
8 information from Mr. Wzorek, since I know this is an  
9 adversarial case, and I wanted to -- and I'm limited to what  
10 information I can get. I wanted to get some information from  
11 his uncle.

12 Q. Was there anything that you learned from the uncle that  
13 was not corroborated by Mr. Wzorek?

14 A. Their reports were not precisely the same, but  
15 substantially agreed on his level of functioning, yes.

16 Q. Did you examine any documents as part of your inquiry  
17 into Mr. Wzorek's state?

18 A. Mr. Wzorek had with him an envelope in which  
19 Dr. Borden's notes, clinical notes, since I had last seen  
20 Mr. Wzorek were Xeroxed for me. I read those.

21 Q. Did you look at those notes?

22 A. Yes, I did.

23 Q. Did those assist you in determining some of the symptoms  
24 that Mr. Wzorek displayed?

25 A. To some extent they assisted me, yes.

1 Q. And did you include any of the significant information  
2 from those notes in your report?

3 A. Yes, I particularly emphasized the treatment that had  
4 been rendered in the last year, which was what was most  
5 helpful from the notes.

6 Q. Based on your examination of Mr. Wzorek and the other  
7 information which you gathered as part of your examination of  
8 him, do you have an opinion, based on a reasonable degree of  
9 medical certainty, as to Mr. Wzorek's current psychiatric  
10 condition?

11 A. Yes.

12 Q. What is that opinion?

13 A. I feel that he's still suffering from residual symptoms  
14 from a partially treated major depression, and that he's  
15 developed agoraphobic symptoms as well, and suffers from  
16 those two conditions.

17 Q. Are these conditions that you've just stated, are these  
18 stressful conditions for someone such as Mr. Wzorek?

19 A. Yes, I would say yes.

20 Q. Would they be painful conditions for him to be under  
21 during the times that he suffers from them?

22 A. Yes.

23 Q. Would these sorts of conditions, from what you saw in  
24 your examination of Mr. Wzorek, are these conditions that  
25 persist from day-to-day in his situation?

1 A. Yes.

2 Q. So he would be living with these conditions every hour  
3 of every day, as he has been over the last few years?

4 A. Substantially most of the time of his conscious  
5 experience, yes.

6 Q. Okay. Now, based on what, on the conclusion that and  
7 you arrived at, which I believe is contained in your report  
8 also --

9 A. Yes.

10 Q. Would you, did you prescribe a course of treatment to, a  
11 course of therapy for Mr. Wzorek to follow to better his  
12 condition?

13 A. Well, I think his -- yes, in a matter of, in a sense I  
14 did. I suggested that he might require different and more  
15 intensive medication, that he might require hospitalization,  
16 essentially not because he's a danger to himself or anything  
17 like that, but to sort of get him out of his environment  
18 where he's trapped, and get -- in order to get him out into  
19 society so he can overcome his agoraphobic symptoms, and then  
20 he would probably need a period of rehabilitation with  
21 outpatient treatment.

22 Q. So he would need -- you would expect that he would need  
23 some hospitalization?

24 A. Right.

25 Q. And then a period of time where he was an outpatient?

1 A. Right.

2 Q. How long a period of time are we talking about with the  
3 hospitalization and the outpatient therapy?

4 A. These are very gross estimates, because it's very hard  
5 to predict a patient's response to treatment. I would  
6 estimate that his -- he might need anywhere from one to three  
7 months in the hospital, followed by outpatient treatment and  
8 rehabilitative treatment, such as a work program,  
9 thresholds, or some agency which uses rehabilitative  
10 techniques to get people back into functioning.

11 Q. What would be your gross estimation as to what period of  
12 time he would need at places like thresholds and outpatient  
13 therapy?

14 A. Anywhere from one to two years.

15 Q. Following, as you say -- so it would take one to two  
16 years, and at that point he would be in a condition then to  
17 take employment?

18 A. That would be the goal of the program. If we were  
19 successful, that's what you would expect to achieve.

20 Q. Do you have an opinion as to whether or not he could  
21 return to work at any job after this period of therapy, he  
22 could ever return to work with the City of Chicago in any  
23 position there?

24 A. My opinion would be that he probably could not return to  
25 work for the City of Chicago.

1 Q. Why is that?

2 A. Because of either a real or imagined or believed  
3 persecution -- I'm sorry, persecutory behaviors that he  
4 fears.

5 I can't tell if these fears are founded on  
6 actual events or if they are paranoid fears, or if he's just  
7 asserting them, but I think they are strong enough, if I just  
8 take all the evidence, to feel that he probably could not  
9 function with the City as an employer.

10 Q. What about in a job as a truckdriver?

11 A. I think he could probably drive a truck for some other  
12 agency if he were rehabilitated.

13 Q. I noticed in your -- let me ask you, what would be the  
14 cost, as best you could estimate, if Mr. Wzorek pursued his  
15 course of treatment with you and at Rush Presbyterian  
16 St. Luke's, your hospital; how much would that cost, in your  
17 best estimate?

18 A. First of all, it would take much more than myself or my  
19 hospital, but it would take rehabilitative efforts, and those  
20 costs will have to be factored in, and these are very rough  
21 estimates. I would say anywhere from \$50,000 to \$150,000 in  
22 costs, depending on how fast he responded to treatment.

23 Q. You indicate in your report towards the end that his --  
24 I'm looking at the bottom of the second page, going onto the  
25 top of the third page, that as time passes, without adequate

1 treatment or resolution of the psychiatric disorders, as well  
2 as resolution of his court case, his disability is likely to  
3 become more fixed and his potential for being rehabilitated  
4 will decrease.

5 What conclusion are you drawing there, if  
6 you could explain?

7 A. Well, I guess I feel that valuable time is lost the  
8 longer he's disabled, and he's reinforced by these  
9 withdrawing behaviors and belief that he's in danger. The  
10 more he withdraws he doesn't test that hypothesis, he doesn't  
11 go out to see that he's free to go out and he's not in  
12 danger, he's going to be more and more convinced of this and  
13 more and more isolated, and he will lose his skills further  
14 and further, both socially and work skills, and it will  
15 become progressively more of a barrier for him to go out and  
16 function, and he will become fixed and chronic in this case.

17 I think he already lost ground in this last  
18 year by not having a really effective treatment program, and  
19 I'm warning if this isn't done, his rehabilitation, the cost  
20 is going to skyrocket each month he's not getting the active  
21 treatment.

22 Q. Is there any way for you to estimate at which point, and  
23 I know we're talking about sort of a progressive condition  
24 here, at which point he becomes -- you talk about a  
25 decreasing ability to be rehabilitated, at which point he

1 would become chronic in his condition?

2 A. That's a very gross estimate, and I'll give you my best,  
3 anyone could disagree with it; but I would say if we're  
4 sitting here a year from now having same conversation, my  
5 conclusion might well be that he is chronically disabled,  
6 that's it.

7 Q. Okay.

8 MR. GUBBINS: No further questions, Your Honor.

9 THE COURT: I have a couple before Mr. Ex.

10 So that you can cope with my questions as  
11 well, both of you, I'll give you a chance to continue after I  
12 have asked them, then I'll give Mr. Ex a chance.

13 You said, Doctor, that Mr. Wzorek is  
14 non-functional now.

15 THE WITNESS: Yes.

16 THE COURT: What does that mean?

17 THE WITNESS: That's he's not able to function  
18 either occupationally or socially.

19 THE COURT: Is he competent?

20 THE WITNESS: Competent, yes.

21 THE COURT: Is he competent to make the kinds of  
22 choices that he has to make relative to this litigation?

23 THE WITNESS: I would think, yes.

24 THE COURT: Is he able to cooperate with his  
25 counsel?



1 THE WITNESS: Yes.

2 THE COURT: Do you know what a guardian ad litem  
3 is?

4 THE WITNESS: Yes.

5 THE COURT: Do you think he needs one?

6 THE WITNESS: I hadn't thought about it. I don't  
7 think there is a need for it at this point.

8 THE COURT: Okay. Now, a couple other questions.

9 You said you've looked at Dr. Borden's  
10 notes. From what I read, Dr. Borden has only seen him once.

11 THE WITNESS: I have some Xerox notes here that I  
12 reviewed when I heard you say that, I counted eight or nine  
13 visits.

14 THE COURT: More than one visit?

15 THE WITNESS: Yes, I counted eight or nine visits.

16 THE COURT: Later on I'm going to ask you,  
17 Mr. Gubbins, to explain to me why the notes I have said one  
18 visit with Dr. Borden, but we'll get to that.

19 You say he has lost ground from last year?

20 THE WITNESS: Excuse me, sir.

21 THE COURT: You say he has lost ground since last  
22 year?

23 THE WITNESS: Well, lost ground in the sense that he  
24 hasn't made any progress, and it fixes his condition more,  
25 and the longer he's in this state the more he's fixed, and I

1 think he probably is more -- I sense more of a movement  
2 towards the agoraphobia, where last year we were talking  
3 about social phobias. Social phobia is a fear of certain  
4 situations. Now he's even reluctant to go out and receive  
5 company, so yes, I guess I'd say to that extent he's showing  
6 a progression of his phobias.

7 THE COURT: You mentioned his reaction to the City.

8 THE WITNESS: Yes.

9 THE COURT: Did you take into consideration the fact  
10 that he felt antagonistic toward the administration that was  
11 in when he lost his job?

12 THE WITNESS: I tried to take that into  
13 consideration, although I must admit I depended more on some  
14 of his statements about threats that he feels he had received  
15 from the City through -- indirectly.

16 THE COURT: Recently?

17 THE WITNESS: Yes, in the last year since I had seen  
18 him.

19 THE COURT: Did you ask him if he felt any different  
20 since the person that he presumed to be his benefactor when  
21 he got into all this mess has finally become mayor?

22 THE WITNESS: I didn't sense that he felt one bit  
23 more secure. I did not ask him the question directly. But  
24 my sense is that he feels just as endangered now as he did  
25 before.

1 THE COURT: Okay, thank you.

2 Mr. Gubbins, did I raise anything that you  
3 want to inquire further on before I give it to Mr. Ex?

4 MR. GUBBINS: No, thank you, Your Honor.

5 THE COURT: Which of you will inquire?

6 MR. EX: I will, Your Honor.

7 THE COURT: Mr. Ex, go to it.

8 CROSS EXAMINATION

9 BY MR. EX:

10 Q. Good morning, Dr. Fawcett.

11 A. Hello.

12 Q. Doctor, I would like to focus your attention on the  
13 medications that you indicated that you gleaned from  
14 Dr. Borden's reports that he was still taking.

15 A. Right.

16 Q. Please tell us what these medications are that he's  
17 currently on.

18 A. My understanding is that he's taking Sinequan, which is  
19 an anti-depressant medication. It's in the tri-cyclic class  
20 of medications, in a dose of 150 milligrams at bed time, and  
21 a drug called Xanax, X-a-n-a-x, which is a tranquilizing,  
22 anti-anxiety drug, in doses of either point five or one  
23 miligram three times a day. My memory is one milligram, my  
24 note says point five, so I would have to check that.

25 He was tried on a major tranquilizer,

1 Stelazine, for a period of weeks, but recently switched off  
2 of that, again, because of fatigue.

3 Stelazine is an anti-psychotic drug, and my  
4 guess is, just from inferring from Dr. Borden's notes, is  
5 that because of his talk about threats and things there is a  
6 question of whether he had paranoid ideation and he was  
7 treated with an anti-psychotic drug, but he was unable to  
8 tolerate that drug because of drowsiness, so it was stopped  
9 just maybe a month before my exam.

10 Q. The Stelazine then, from what you just indicated, would  
11 be used to treat the psychotic features of depression?

12 A. Appropriately it would. Some doctors use it to treat  
13 anxiety, and I'm just inferring from one of the symptoms that  
14 I'm seeing why the doctor is doing what he's doing. It  
15 didn't say in the notes why he was doing that.

16 Q. In your medical opinion, given Mr. Wzorek's symptoms,  
17 would you have used an anti-psychotic to treat his particular  
18 condition?

19 A. Well, there is a question that I had clinically, whether  
20 Mr. Wzorek's concerns about possible harm are delusional, or  
21 whether they are the type of paranoia you see in many courts  
22 or adversarial situations, or whether, you know, he could be  
23 making them up, and I have to consider all three of those  
24 possibilities.

25 If they were in fact a delusional symptom,

1 if that's the case, that's a fairly serious symptom, and it  
2 puts the severity category much higher, and in that case, if  
3 I determined that from my own examination over time, I would  
4 then treat it with psychotic medication.

5 Q. If you were convinced that he had that delusional  
6 feature, then you would use anti-psychotic drugs?

7 A. Yes, that's appropriate treatment for a psychotic  
8 depression.

9 Q. Given the level of that Stelazine drug that were  
10 administered, according to Dr. Borden's report, I believe  
11 that you had said that it was five milligrams twice a day?

12 A. My memory is five milligrams twice or three times a day,  
13 yes.

14 Q. Would that be an appropriate level on which --

15 A. It's a moderate dose and could be effective in a patient  
16 with a psychotic depression, along with anti-depressant  
17 medications.

18 Q. You were stating that there was a hundred milligrams a  
19 day, which is a low-level dose?

20 A. 150 milligrams a day, which is a low -- I would say it's  
21 a therapeutic dose level. It's within the range, but it's at  
22 the low end of it. He was getting I think 300 at one time  
23 earlier in his treatment.

24 Q. Based on your observations of Mr. Wzorek, would you use  
25 a different medication regimen than what Dr. Borden had been

1 administering?

2 A. I might try some different medications to try and get a  
3 more complete response, yes.

4 Q. What would you attempt to implement?

5 A. Well, one might try some other tri-cyclic medications,  
6 such as I such as Nortriptyline or even Amitriptyline because  
7 of the weight problem that he has, I might try a newer  
8 medication called Prozac or Fluoxetine.

9 Q. Excuse me, Doctor. When you use those terms,  
10 tri-cyclics are you referring to anti-psychotic drugs?

11 A. No, anti-depressant drugs.

12 Q. Is there anything else in terms of medication that you  
13 would attempt to implement with Mr. Wzorek's case?

14 A. Well, I would essentially try and effectively treat his  
15 depression and anxiety symptoms as well as it could be done  
16 with medication, and then I would use other procedures to try  
17 and get him to tolerate being outside and to desensitize him  
18 from his anxiety.

19 Q. You used that term, to desensitize him, from my past  
20 psych class, s that the behavioral type of therapy that you  
21 are referring to in your report?

22 A. Yes.

23 Q. So that would be some time of system anti,  
24 desensitization to try to get him to adjust to being outside  
25 of his limited environment?

1 A. That's right.

2 Q. I notice that you were also referring to some group  
3 therapy in your report.

4 A. Yes.

5 Q. Is that something different from the behavioral therapy?

6 A. Well, it's somewhat different. But it would support the  
7 behavioral therapy.

8 There are patient groups now, groups of  
9 patients with phobias who meet and discuss their phobias and  
10 how they overcame them, and it inspires people that have the  
11 problem to get the hope that they can get out of it. It  
12 gives them a tremendous boost, and I think it would help  
13 motivate him.

14 Q. It's like a support group?

15 A. Right.

16 Q. These behavioral therapies and the support groups that  
17 you're referring to, are those types of treatments  
18 implemented by psychiatrists?

19 A. No, they are really run by patients. The problem is  
20 getting the patient to them. If you can get him someone who  
21 is afraid to go out to attend them, then you've got a good  
22 thing going.

23 Q. So that's not something that would be implemented within  
24 a hospitalization plan?

25 A. You could in fact -- see, the real reason for a

1 hospitalization would be to make better observations on this  
2 patient, so you know more clearly what these symptoms mean,  
3 such as his suspiciousness and things like that.

4 Secondly, to get him out of his house and  
5 out of his environment, force him out of it into a new  
6 environment that he would have to adapt to, the hospital, a  
7 protected, but new environment.

8 And then from there you would get him out of  
9 there and to go these groups, send him to thresholds from  
10 the hospital until he's going this prettily easily, and then  
11 you would send him back home again and keep doing those  
12 things, so it's a matter of easing him from one environment  
13 to the next and overcoming his fears.

14 Q. Would one of the purposes of the hospitalization to  
15 moderate his medication regimen?

16 A. At the beginning, yes, until he was on a stable,  
17 effective medication.

18 Q. To attempt to use some of those other alternative  
19 medications that you were just referring to?

20 A. That's true.

21 Q. That can be done under a hospitalization environment?

22 A. Yes, much more readily, because you know for a fact what  
23 medication the patient is getting, and it is being taken  
24 adequately, etcetera.

25 Q. The types of things that you were just referring to, can



1 they be done on an outpatient basis?

2 A. They can be done on an outpatient basis, as far as the  
3 medications are concerned.

4 With an agoraphobic patient, it's sometimes  
5 very difficult to get them out of their environment enough to  
6 partake of these other programs.

7 THE COURT: Let me stop you for a minute. Doctor,  
8 you say agoraphobic, and it is my recall, vague, however,  
9 that there is a-g-o-r, and a-g-e-r-o.

10 THE WITNESS: I'm talking about agoraphobia,  
11 a-g-o-r.

12 THE COURT: You are. Okay. You're not talking  
13 about the fear of open spaces?

14 THE WITNESS: Yes, yes, that's right. That's what  
15 that is.

16 THE COURT: You are.

17 THE WITNESS: Yes. But fear of open spaces really  
18 translates itself somewhat paradoxically into just a fear of  
19 any -- of going away from home, from a home base, and being  
20 out there and on your own and not -- and feeling that  
21 something is going to go out of control and something bad is  
22 going to happen.

23 It might be going to the store, it might be  
24 going somewhere in a bus or something, they would be  
25 frightened. It's all subsumed under agoraphobia.

1 THE COURT: There are two phobias.

2 THE WITNESS: There are a lot of different specific  
3 phobias, such as social phobias, some people only have them  
4 when they go to a restaurant.

5 THE COURT: I'm just trying to get -- You're talking  
6 more about a social fear than a fear of standing out in an  
7 open field?

8 THE WITNESS: True, yes.

9 BY MR. EX:

10 Q. Dr. Fawcett, I just want to get something clear for the  
11 record, and for the record, this is marked as Defendant's  
12 Exhibit No. 50, which I believe is a copy of the Dr. Borden  
13 notes that you looked at prior to reviewing Mr. Wzorek.

14 A. Right.

15 Q. Is that in fact, if you take a minute to look through,  
16 is that in fact a copy of the Borden notes that you looked  
17 through?

18 A. Yes, it's the same copy that I saw.

19 Q. To the best of your ability, you believe that it was  
20 approximately eight or nine visits?

21 A. Yes, I counted them. The first one was seven days after  
22 my last testimony on the 8th of November, and I counted them  
23 after that, and I got nine visits.

24 The last one -- the last one was on the day  
25 I saw him.

1 Q. I want to focus your attention back on the agoraphobia  
2 that you were just discussing.

3 Are there any medications that can treat  
4 agoraphobia in conjunction with the behavioral therapy that  
5 you were referring to?

6 A. Yes, anti-depressant medications, and the drug Xanax,  
7 which he's on, sometimes in higher doses have been effective  
8 in treating agoraphobia, with or without panic attacks.

9 Q. When you were referring to adjusting his medication, the  
10 types of medications and the levels, it's possible that if  
11 those types of medications were somehow adjusted, that  
12 medication in and of itself could have some impact on his  
13 overcoming his agoraphobia?

14 A. Well, it would reduce his anxiety, but the avoidance  
15 behavior you see is more of a learned behavior. If you  
16 suppress the anxieties of a patient, they can tolerate going  
17 out, and then force them -- not force them physically, but  
18 put them in a situation where they are exposed to going out  
19 and they see nothing goes wrong, after a while they start to  
20 accomodate to going out.

21 Q. So it's really sort of a joint type of therapy?

22 A. It's a joint type of therapy. It's not an either or  
23 thing.

24 Q. One, the medication reduces the physical anxiety level,  
25 and the behavioral therapy tries to alleviate the learned

1 behavior that results from that anxiety?

2 A. Right. That's right, that's correct. Very good.

3 Q. You were testifying earlier about the paranoid, paranoid  
4 delusions or the fear of retaliation or feelings of the City,  
5 or against the City.

6 Were those feelings stronger on your last  
7 examination than they were in the first examination of  
8 Mr. Wzorek?

9 A. There were just as many complaints this time as last  
10 time. I didn't see any real change.

11 Q. So you believe that there is very little probability, if  
12 any, of his ability to go back to work for the City of  
13 Chicago?

14 A. I think it would be very difficult to accomplish that.

15 THE COURT: Counsel, I have blown my lunch date so  
16 keep working.

17 MR. EX: Okay.

18 BY MR. EX:

19 Q. You indicated that as part of your examination of  
20 Mr. Wzorek you had an opportunity to briefly speak to his  
21 uncle, and you mentioned that in some ways his uncle's  
22 comments differed, or his observations of Mr. Wzorek differed  
23 from Mr. Wzorek's own comments to you.

24 I was wondering if you could focus in a  
25 little bit more on how his uncle viewed his problems as

1       opposed to how he did or how they differed.

2       A.    I just think his uncle was a little more objective,  
3       which is easier when you're not the person experiencing the  
4       symptoms. I think he saw the self-defeating aspects of  
5       Mr. Wzorek's behavior a little bit more objectively than  
6       Mr. Wzorek can see it.

7                       And also -- well, I think that's mainly it.  
8       There was no substantial difference in the behaviors. In  
9       other words, he didn't tell me Mr. Wzorek was going out and  
10      having parties at night when in fact he was, Mr. Wzorek was  
11      telling me he never went out.

12                     I was trying to test whether, is he really  
13      house-bound, is he really as bad as he says, and I was  
14      looking at Dr. Borden's notes, and I saw this other witness,  
15      so I asked him, and I got the same story, materially; that  
16      Mr. Wzorek retires, he sometimes doesn't talk to people,  
17      answer the phone, he retires to the bedroom when people  
18      visit, and he doesn't go out very much and he always has to  
19      have someone with him, which is characteristic of an  
20      agoraphobic patient.

21      Q.    When you say his uncle recognized objectively a  
22      self-defeating behavior, that was his interpretation of his  
23      behavior or conduct?

24      A.    Yes.

25      Q.    Doctor, you just testified that you felt that giving

1 gross estimates of one to three months in the hospital would  
2 be your recommendation, followed by one to two years of  
3 outpatient therapy.

4 A. Yes.

5 Q. And the outpatient therapy, I take it, would include  
6 those behavioral therapies that you were indicating, and that  
7 group type of therapy for the agoraphobia?

8 A. Yes.

9 Q. Is there anything else that you would recommend that  
10 would be a part of his treatment mode?

11 A. Well, I don't know too much about the family situation  
12 and what this has done with regard to his marriage and his  
13 family.

14 It might be necessary to have them see a  
15 counselor for family therapy at some point. I can't  
16 determine that at this point, but it certainly might be  
17 possible.

18 Q. When you were talking in your report about the major  
19 depression that was only partially responsive to the  
20 medications, I just want to clarify for myself; does that  
21 mean that it was only partially responsive, you would alter  
22 the medications or try a different regimen in order to  
23 rectify that partial response?

24 A. Try to do better.

25 Q. Do you have any opinion as to whether or not Mr. Wzorek

1 could do better on medications?

2 A. I think he might be able to do better.

3 Q. Without repeating what you've already said, is there any  
4 particular medication that you think you would try to  
5 implement for him?

6 A. Well, I mentioned Prozac or Fluoxetine would be one  
7 possibility. There is no way to predict medication response  
8 in a individual patient, if this individual is capable of  
9 doing it, so these are all empirical trials that you pursue.

10 Q. So it's a trial and error type of procedure?

11 A. Unfortunately, that's the truth.

12 Q. Would you agree that up to this point in Mr. Wzorek's  
13 therapy he has received adequate trial and error procedure?

14 A. Well, the only medicine I've seen used is the  
15 anti-depressant, Sinequan, to which he's had a partial  
16 response. And when a patient has a partial response, you  
17 usually go with it initially. But if he only gets to a  
18 partial response, the question comes up could he do better  
19 with another treatment, and I think we are certainly at the  
20 point of asking that, at least I am.

21 Q. You had testified that you felt that at the end of this  
22 rehabilitation or treatment period that he would be capable  
23 of going back to work, and you had laid out roughly a  
24 three-month hospitalization, and then a one to two-year  
25 follow-up therapy.

1 Did you believe that it would take that long  
2 for him to actually resume some type of work, or that he  
3 could actually get back into the work force in conjunction  
4 with therapy?

5 A. I think the goal is a reasonable goal, and I'm giving  
6 you an estimate. If treatment was fabulously successful,  
7 that estimate could be down to six months. It would all  
8 depend on how treatment, how successful treatment was in this  
9 specific case.

10 I'm trying to be a little conservative to  
11 give some room to move in, because I can't predict how he'll  
12 respond, and I know he's been fixed in this situation for a  
13 couple -- not a couple, he's been fixed in it since '85, so  
14 that is going against you.

15 I'm putting all those factors together and  
16 giving you an estimate.

17 Q. An estimate that obviously can't be hard and fast, so  
18 it's possible that in six months he could recover to the  
19 point where he could work?

20 A. It's possible.

21 Q. The agoraphobia, as you described it, is that the aspect  
22 of his current condition that actually inhibits him from  
23 functioning in a work environment right now?

24 A. I think the most -- I think the depression is there  
25 driving it, but the agoraphobic symptoms are what you see



1 that really limits him in this function at this point.

2 Q. So would it be correct to say that if you could get the  
3 agoraphobia under control, even though he would continue  
4 possibly with some depressive symptoms, he could work while  
5 still classified as depressed if he could get the agoraphobia  
6 under control where he could leave his environment and get  
7 into a work environment; would that be a fair  
8 characterization?

9 A. Usually we see the depression as primary to an anxiety  
10 disorder, in other words driving it, and I think that  
11 probably behind his agoraphobia is his depression.

12 Usually what's behind agoraphobia are panic  
13 attacks. I can't detect any panic attacks in this case, so I  
14 have to assume that his agoraphobia is probably secondary to  
15 the depression that you can just barely see at this point,  
16 because he's on some medication, it's partially treated.

17 So I'm making the assumption that you would  
18 have to address his depressive symptoms more effectively, and  
19 in order to get his anxiety levels down enough so that he  
20 would be responsive to the behavioral interventions that we  
21 talked about.

22 Q. The question in terms of trying to determine whether or  
23 not a particular anti-depressant is working in a therapeutic  
24 level, is one of the ways that you would test to see that by  
25 giving a blood test?

1 A. No, no.

2 Q. How would you?

3 A. There is a blood test that's used in research circles,  
4 but it has to be positive in the patient to start with, and  
5 then it has to revert to normal. It's called the DST test.  
6 But many patients don't have a positive test to begin with,  
7 so it doesn't really help.

8 What I'm talking about is really just the  
9 number of symptoms of depression that you can see in this  
10 patient. If a patient has five major symptoms, for instance,  
11 if they are having trouble sleeping, they can't make  
12 decisions, they have no motivation, they feel fatigued all  
13 the time and they have no pleasure response to normally  
14 pleasurable events, and three of those symptoms could go away  
15 with treatment, you have roughly a 50 percent response.

16 In this person, his symptoms are less  
17 severe, he sleeps a little better but he has to take  
18 sedatives. So his sleep is still disordered. It's just that  
19 it's covered up by the medicine.

20 He's antidonic, he has no sensation of  
21 pleasure, as far as I can tell, at any time. And so those  
22 are all symptoms of a residual depression, and you would want  
23 to see those -- the only goal of treatment with medication is  
24 to see those disappear.

25 Q. So you would monitor medications by looking at what his

1 own behavior was?

2 A. Right.

3 Q. And that would dictate your professional opinion on what  
4 medications to use or what levels to use?

5 A. That's right.

6 Q. To focus in a little bit about the possibility of  
7 Mr. Wzorek accomplishing these particular objectives without  
8 having to actually be hospitalized, you said in your report  
9 that -- you used the term voluntary hospitalization.

10 Are you inferring that if Mr. Wzorek did not  
11 want to go in the hospital, then under no circumstances would  
12 you recommend that he be hospitalized?

13 A. I don't think he could be hospitalized. The only  
14 grounds for involuntary hospitalization are danger to self or  
15 others, or inability to physically care for oneself in this  
16 state, and he doesn't meet those requirements.

17 Q. So if Mr. Wzorek elected not to enter a hospital, if he  
18 reached a point where he felt that was something he wanted to  
19 consider, you believe that on an outpatient basis he could  
20 still effectively accomplish some sort of recovery in that  
21 timeframe that you had indicated before, one to two years?

22 A. I think his chances would be less of a success, because  
23 I think it would be harder to initiate treatment with this  
24 patient without getting him out of his current environment,  
25 without moving him out of there and giving him a new

1 environment to start with. And I would advise him of such,  
2 if I were asked to.

3 But I wouldn't refuse, I would try. I just  
4 think that the possibilities of success would be less, and I  
5 think the result would take much longer to achieve, if you  
6 could achieve it.

7 Q. Okay. At this point in time, Doctor, do you believe  
8 that if he were to receive the type of treatment that you've  
9 just outlined, that he would be able to resume doing the  
10 types of things he was doing before his illness --

11 A. I think there is --

12 Q. -- Was apparent?

13 A. I think there is a good possibility he could.

14 Q. You believe that most of his condition could --

15 A. With the exception of working for the City, I don't  
16 think I would add that to it.

17 Q. You believe that most of his condition can be reversed,  
18 as you see it at this time?

19 A. I think he's treatable right now.

20 Q. Doctor, I want to turn your attention to the alternative  
21 mental health care providers available in the State of  
22 Illinois, particularly around the Chicagoland area.

23 Are you aware of any public, or private, for  
24 that matter, community mental health centers that will treat  
25 people on the basis of their ability to pay?

1 A. There is a city system of treatment. I don't know a lot  
2 about how those clinics operate or how effective they are.  
3 There are state outpatient clinics. I know there is one at  
4 ISPI.

5 There are outpatient facilities at most  
6 university hospitals that have residencies, such as Rush and  
7 others, where he can get outpatient treatment.

8 Q. That would be based purely on his ability to pay?

9 A. Correct.

10 Q. So the doors are not completely closed on somebody in  
11 Mr. Wzorek's condition by virtue of the fact that he doesn't  
12 have the money, for instance, to hire or retain you as a  
13 psychiatrist?

14 A. Oh, yes, he certainly could get other kinds of  
15 treatment.

16 I think that one of the problems here is  
17 putting together the elements of treatment that he needs.  
18 For instance, I told you I recommended initial  
19 hospitalization. But, putting that together with a good  
20 outpatient follow up, and that together with good referrals  
21 to other facilities such as thresholds or some other  
22 rehabilitative facility. That's the kind of immigration you  
23 need, so you need a program that will do that.

24 THE COURT: Excuse me. May I?

25 MR. EX: Sure.

1 THE COURT: You wouldn't depend on him to integrate  
2 that?

3 THE WITNESS: No, of course not.

4 THE COURT: And you wouldn't depend upon a lawyer?

5 THE WITNESS: Well, a lawyer could do it if he  
6 wanted to spend the time.

7 THE COURT: Who would you depend upon?

8 THE WITNESS: Probably a treatment team of people  
9 that have access to good social workers.

10 THE COURT: How does he come into contact with such  
11 a group?

12 THE WITNESS: That's the issue. A good mental  
13 health clinic associated with a hospital might be able to do  
14 that if the mental health clinic were functioning with the  
15 hospital.

16 I don't know of any in the Chicago area, but  
17 I know of some in other parts of the state that operate that  
18 way. I'm not saying there are none in Chicago.

19 THE COURT: How far away?

20 THE WITNESS: I believe some cities like Rockford,  
21 and cities like that.

22 THE COURT: Joliet?

23 THE WITNESS: Joliet.

24 THE COURT: Waukegan?

25 THE WITNESS: Right.

1 THE COURT: Go ahead.

2 Wheaton?

3 THE WITNESS: Maybe. Maybe DuPage County.

4 BY MR. EX:

5 Q. There was an acronym that you used, ISPI, is that the  
6 Illinois State Psychiatric Institute?

7 A. Yes.

8 Q. Is that a hospital, essentially?

9 A. That's a hospital with an outpatient clinic.

10 Q. Where is that located?

11 A. That's on west Taylor.

12 Q. So that is something along the lines that you're  
13 referring to, and that's in Chicago?

14 A. Right, right. I happen to know that they are being  
15 moved out of their building for three years for asbestos  
16 removal to another hospital. I'm not sure how functional  
17 they are going to be over the next year or two.

18 THE COURT: They are the people that the criminal  
19 courts go to to decide whether somebody is mentally  
20 disabled.

21 BY MR. EX:

22 Q. They, to your knowledge, they do offer some type of  
23 opportunity now at this point?

24 A. They do now, right.

25 Q. Also, facilities like Rush, where you work?

1 A. Right.

2 Q. Do they have any type of either research or experimental  
3 programs or other opportunities where they will take people  
4 on on a free basis, as part of either a subsidation through  
5 the state or city or through some type of grant?

6 A. Hospitals like Rush that essentially private, voluntary  
7 hospitals, do have patients that are funded by governmental  
8 agencies such as Public Aid, Medicare.

9 They don't have programs that -- there  
10 usually needs to be some funding for the hospital to operate,  
11 since they receive no other funds from anywhere else.

12 Q. So under some circumstances, though, it would be  
13 possible to utilize even a private hospital for an indigent?

14 A. I'm not a social worker, but this patient may be  
15 eligible for certain SSI or Social Security benefits, and  
16 other things that would cover some of the cost of some of his  
17 care.

18 I don't know his background in terms of how  
19 many years he's worked, and whether he has made enough  
20 contribution for all those things, but that would all be  
21 possible.

22 Q. Is there a facility, that you're aware of, a state-run  
23 facility called Tinley Park Mental Health Center?

24 A. Yes, Tinley Park, as I understand it, is primarily an  
25 inpatient facility.



1 Q. Inpatient?

2 A. I'm sure they have an outpatient follow-up clinic. I  
3 don't know whether they are capable of integrating the kind  
4 of care program that I've outlined for him. I'm not saying  
5 they don't, but I don't know that they are.

6 Q. Let me ask you, I know that you already stated that you  
7 weren't familiar with the city community health centers.

8 A. Right.

9 Q. But assuming I were to tell you that there were  
10 community health centers that were located on the south side,  
11 perhaps even near where Mr. Wzorek lives, would it be  
12 feasible to integrate that type of inpatient outpatient type  
13 of communication, so that if he were able to seek a  
14 hospitalization at one of these facilities, whether it be  
15 that ISPI or the Tinley Park, or one of these other state  
16 subsidized or state-run institutions, that it's not beyond  
17 the realm of possibility that it could be done?

18 A. With adequate continuity of care, if that were  
19 achievable, yes, that might be done.

20 THE COURT: I don't know what that means. I don't  
21 know what the question means, really.

22 What are you trying to get out of this  
23 witness? I think you have gone way beyond the purpose. If  
24 you're talking about available health care, I'm sure that the  
25 doctor knows what goes on in the City in terms of health

1 care. I don't know if he used any of them, I don't know if  
2 he knows what they cost, I don't know if he knows how they  
3 are paid for, I don't know if he knows -- you're presuming  
4 you're telling us there is something called a city community  
5 health center which he really knows nothing about, because he  
6 didn't even know if they existed. So I think you're going  
7 way far afield with this witness.

8 MR. EX: Your honor, I guess was trying to find out  
9 whether he felt that if there was such a facility that --

10 THE COURT: That's purely speculative. If you are  
11 talking about damages and you have something to propose,  
12 bring some people in who can give us some facts, and then  
13 we'll consider it. I think you've gone a little far afield  
14 from the doctor's testimony. Maybe not.

15 Keep going. I don't want to cut you off  
16 entirely, but I don't want to waste time either.

17 MR. EX: I understand. The only point I was trying  
18 to get out --

19 THE COURT: If you're going to come in with some  
20 testimony in this respect, or if Mr. Gubbins is, fine. Now  
21 you're talking damages, you're not talking psychiatric care,  
22 and the man came on the stand to talk about psychiatric  
23 care.

24 If you have something within that scope,  
25 though, go ahead.

1 MR. EX: Your Honor, I think I've pretty much  
2 touched upon what I wanted to get out of the doctor in that  
3 area.

4 THE COURT: I've probably used ISPI and Tinley Park  
5 more than the doctor has, over the last 13 years on the  
6 bench, and I don't have a high confidence level in either one  
7 of them. For whatever that's worth.

8 And I know you were a witness, you were with  
9 ISPI.

10 THE WITNESS: The research side.

11 THE COURT: I know.

12 BY MR. EX:

13 Q. Doctor, do you know what a compensation neurosis is?

14 A. I think so.

15 Q. Can you explain to us what that is?

16 A. It's been described in the literature as a condition,  
17 essentially a neurotic condition that is essentially caused  
18 by the -- by an adversarial kind of situation, where a victim  
19 feels some sort of injury, feels entitled to compensation or  
20 get involved in proceedings to gain compensation, and this  
21 process induces in the individual a heightened concern and a  
22 heightened preoccupation with their injury and with their  
23 disability, with their symptoms, and the inference being that  
24 the condition itself, the adversarial condition itself and  
25 the quests for damages becomes a major preoccupation and sort

1 of distorts the person's life and creates its own symptoms  
2 over time, worsening their condition, and certainly  
3 prolonging and enlarging the scope of their injury.

4 Q. Did you take that possibility into account at all when  
5 you were looking at Mr. Wzorek?

6 A. I think I may have mentioned that in my last testimony,  
7 if I remember correctly. I certainly think that that can be  
8 an outcome.

9 I considered it, I really consider it a real  
10 cause of neurotic disability, and I certainly do take it into  
11 account. I think that to the extent that it occurs in this  
12 situation, I think there is, as time goes on, an increasing  
13 focus on this, and I think it does, if anything, increase  
14 disability. It's a real condition.

15 THE COURT: I would like to ask a question about  
16 that, Mr. Ex.

17 MR. EX: Sure, Your Honor.

18 THE COURT: Doctor, I don't want to confuse the word  
19 willful with either the stubborn or the moral, as it's  
20 frequently used by others, but I know that psychiatrists use  
21 it sometimes in the fashion that distinguishes it from other  
22 causes.

23 Is this compensation neurosis a willful form  
24 of complication, in the sense that the psychiatrists use the  
25 words?

1 THE WITNESS: In the sense that the person decides  
2 they are going to remain ill in order to gain compensation?

3 THE COURT: However neurotically they may decide?

4 THE WITNESS: I don't think it's a willful thing, in  
5 that sense. I think it is a -- certainly a feeling that  
6 something needs to be paid back and owed to a person. I  
7 think there is that feeling in a compensation neurosis.

8 THE COURT: It's more responsive than initiative?

9 THE WITNESS: I think so.

10 THE COURT: Thank you.

11 BY MR. EX:

12 Q. Do you have any opinion, if this litigation were to end,  
13 what effect that would have on Mr. Wzorek?

14 A. I think it would be a positive effect. It wouldn't be  
15 enough -- he wouldn't just revert to his previous self.  
16 Because -- if this ended and he were given some award or some  
17 kind of judgment, I have no idea whether that's being  
18 considered, I might say, but if he were, I don't think that  
19 would solve his problem.

20 I think it would help, I think it would be a  
21 positive force in the resolution of his problem.

22 Q. I believe as of the time that Mr. Wzorek was terminated  
23 in 1984 he was somewhere around 40 years old. Is that an  
24 unusual age in which to see a male experience a severe  
25 depression, with no prior history, to see it for the first

1 time expressing itself?

2 A. It's not an unusual age. There really is no unusual  
3 age. It used to be taught, when I was in my training, that  
4 people didn't show significant depression until the age of  
5 40. We're now seeing very young people get depressions at an  
6 alarming rate, but they can occur any time in a life span.  
7 There is no unusual time.

8 Q. Given your experiences with Mr. Wzorek and your medical  
9 expertise, do you feel that it's possible that Mr. Wzorek  
10 would still be subject to this type of illness even if he  
11 were not terminated from his job with the City?

12 A. I can't say that some other event or some other series  
13 of circumstances might not have brought out a depression of  
14 Mr. Wzorek. There is no way I can say that.

15 Q. Is it possible that perhaps no circumstances, that just  
16 it could have occurred?

17 A. It's possible.

18 THE COURT: Counsel, you're going back over things  
19 the Court's already decided as a result of a long hearing.

20 MR. EX: If you will indulge me one moment, Your  
21 Honor.

22 THE COURT: Sure.

23 MR. EX: I have no further questions, Your Honor.

24 THE COURT: Mr. Gubbins.

25 MR. GUBBINS: Yes, sir, Your Honor.

1 MR. EX: Excuse me. One thing I would, just for the  
2 record, Your Honor, so that you have the opportunity to  
3 peruse it, I would like to move Dr. Borden's notes into  
4 evidence.

5 MR. GUBBINS: We have no objection, Your Honor.

6 THE COURT: Allowed.

7 MR. EX: Thank you.

8 THE COURT: Can you read them?

9 MR. EX: Some of them, questionable, but to the  
10 extent that you feel it might be helpful, Your Honor.

11 THE COURT: Thank you.

12 MR. GUBBINS: Again, for the record, Dr. Fawcett's  
13 report is now part of the evidence also.

14 THE COURT: The only part I really read easily was  
15 the part where it says the judge was fair.

16 REDIRECT EXAMINATION

17 BY MR. GUBBINS:

18 Q. Following up on that Your Honor; Dr. Fawcett, this  
19 hasn't come up before, but I wonder if you could factor this  
20 in anyway.

21 There is a possibility that if Mr. Wzorek  
22 was reinstated he could begin working with the City, it's  
23 possible for a Federal Court to continue jurisdiction over  
24 him, so that the individual involved would feel the  
25 protection of the Federal Court at the point where he's, he's

1 rehabilitation?

2 A. No, I was referring to the notion that, I was being  
3 asked about compensation neurosis, and I was saying that  
4 simply resolving this case with some kind of an award in his  
5 favor, if that were to happen, would not solve his problem in  
6 itself. It would -- putting this to rest would help him to  
7 move on, certainly. That's all I was saying.

8 Q. From what you know of Mr. Wzorek, do you believe that  
9 once he does receive an award and goes through this therapy  
10 that he would be able to move on to --

11 A. I think he's got some elements that make that highly  
12 possible, yes.

13 THE COURT: What are those?

14 THE WITNESS: I think he's got some native  
15 intelligence, I think he's got all types of problems around  
16 self-esteem that if solved could allow him to function in a  
17 much -- in a reasonable level.

18 THE COURT: His tested intelligence doesn't seem to  
19 compare well to his caninness.

20 THE WITNESS: Right.

21 THE COURT: Does it?

22 THE WITNESS: I would estimate his intelligence as  
23 higher than his tested, and I think he has certain capacities  
24 to work with.

25 THE COURT: Does he have a reading problem, do you



1     gone back to his previous employer.

2                     Would that knowledge, that after having been  
3     treated, or having been dealt with fairly in court, and then  
4     knowing that when he goes back to work that he has the  
5     protection of the Federal Court when he's working, so that if  
6     he has any problems he can come back here; is that something  
7     that might help his reinstatement?

8     A.   Let me say that if he were gotten to a place where he  
9     could work and function, that we're looking at maybe a year  
10    down the road, and he were reinstated under -- he might be,  
11    he might, if he were very successfully treated be objective  
12    enough to accept reinstatement under some special protective  
13    measures; yes, he might. I couldn't rule it out.

14    Q.   So that he could go back to work, even for the City,  
15    possibly go back to work for the City, if he knew that the  
16    protection of the court was always available to him?

17    A.   He would have to be a lot more well than he is now to be  
18    able to do that. I think it's questionable, but I can't say  
19    it's impossible.

20    Q.   Let me just follow up on one other area.

21                     Even if he -- You stated towards the end of  
22    your testimony that even if he did at some point did receive  
23    an award and received some compensation from this court, that  
24    that wouldn't solving his problem, are you referring to this  
25    course of treatment that he need go through for

1 think?

2 THE WITNESS: He might have a dyslexia problem.

3 THE COURT: Because his testing scores are very low.

4 THE WITNESS: They weren't made available to me.

5 THE COURT: As I recall they were in the double  
6 digits.

7 THE WITNESS: When were those taken.

8 THE COURT: I don't know.

9 THE WITNESS: If he was tested in this condition for  
10 instance I wouldn't put much credence in it.

11 THE COURT: I think it was earlier, but I'm not  
12 sure.

13 BY MR. GUBBINS:

14 Q. One final question, Dr. Fawcett, would you expect  
15 somebody suffering from Mr. Wzorek's condition, where he's  
16 non-functional both socially and economically, to be able to  
17 go out, get treatment for himself, put together the program  
18 that he needs, without money, raise whatever governmental  
19 funds, or look into -- emergency funds, or look into an  
20 experimental program and be able to do that, to put together  
21 the program that he needs to get well?

22 A. No, I wouldn't.

23 THE COURT: I didn't catch all that.

24 MR. GUBBINS: Basically my question was directed  
25 towards someone in Mr. Wzorek's condition is not functionally

1     able to leave the house or to seek employment, and would the  
2     doctor expect somebody like that to go out and find the  
3     proper government funding.

4             THE COURT: All right. I understand.

5             MR. GUBBINS: No further questions, Your Honor.

6             THE COURT: Mr. Ex?

7             MR. EX: One follow-up on that question, Your  
8     Honor.

9                     RE CROSS EXAMINATION

10     BY MR. EX:

11     Q. Doctor, Mr. Wzorek was accompanied by his uncle.

12     A. Yes.

13     Q. And I believe that in your report, whenever he goes out  
14     of the house he's accompanied by some family member.

15     A. That's what I was told, yes.

16     Q. Is it your understanding that he has some familial  
17     support group?

18     A. He has some family support. I don't know how much, but  
19     he has that much.

20     Q. Would you characterize Mr. Wzorek as being a person who  
21     is basically out there on his own in the world?

22     A. I don't think he's just on his own. He has -- he does  
23     have some family.

24     Q. So there are people available who could help him make  
25     certain decisions on how to seek treatment?

1 A. Yes, but I think we have to realize what we're dealing  
2 with here. At this point I think he will do anything, he  
3 will avoid doing things that require him to go out.

4 I think he has had to be urged to go out and  
5 do some of the things that he had to do in connection with  
6 this hearing, and such things, from what I can understand in  
7 talking to his uncle, I think it would, he would tend, if  
8 left to his own devices, and just his family devices, to stay  
9 right where he is. He's going to need something to move him  
10 out.

11 THE COURT: Do you know what the support group is  
12 like? Are they educated?

13 THE WITNESS: They vary a great deal from group to  
14 group.

15 THE COURT: Who is in his family?

16 THE WITNESS: You mean his support, I'm sorry, I  
17 thought you were talking about the other support groups.

18 No, I'm sorry, I do not know, I only met his  
19 uncle, and he had to be with him --

20 THE COURT: Do you know what his uncle does.

21 THE WITNESS: No.

22 THE COURT: Do you know his education?

23 THE WITNESS: No, I think he's a machinist or  
24 something.

25 THE COURT: Who lives at the house with him?

1 THE WITNESS: His mother.

2 THE COURT: He lives with his mother and uncle?

3 THE WITNESS: No, his uncle, he doesn't live with  
4 this uncle. He lives with his mother, and I don't know who  
5 else.

6 THE COURT: Do you know anything about his mother's  
7 educational background?

8 THE WITNESS: No.

9 THE COURT: Or work?

10 THE WITNESS: No.

11 BY MR. EX:

12 Q. To your knowledge, is Mr. Wzorek still married?

13 A. Yes.

14 Q. So he has a wife?

15 A. Yes.

16 Q. He does have children, correct?

17 A. Yes.

18 Q. I guess the resistance of leaving his house that you  
19 were referring to, that's something that is basically a part  
20 of his nature at this point?

21 A. It's part of his illness.

22 Q. That's not a function of who would be treating him?

23 A. No, but the ability to overcome it would be a function  
24 of the type of treatment that he has.

25 MR. EX: I have no further questions.

1 THE COURT: Mr. Gubbins?

2 MR. GUBBINS: No further questions, Your Honor.

3 THE COURT: Doctor, is there anything you haven't  
4 been asked that you think you would like to say about this  
5 situation, in terms of this patient or this person?

6 THE WITNESS: Well, I think I have inferred, in my  
7 response to the questions, but I feel that everybody, the  
8 City, the patient, would be served by getting him adequate  
9 treatment as soon as possible.

10 I think that whatever damage has been  
11 incurred would be minimized, and I think that he would be  
12 much better off to get this behind him and going, and that's  
13 the only --

14 THE COURT: Do you think he will participate?

15 THE WITNESS: I think that he'll try and avoid some  
16 of the very things that he -- that he needs to do initially,  
17 but if the treatment is fashioned correctly, I think he'll  
18 participate, if he can relate to the people treating him,  
19 sure.

20 He showed some capacity to be able to relate  
21 to me, and I only met him twice. He responded, I feel he  
22 responded positively in our relationship just by talking with  
23 someone that he saw to be an authority, but somebody who  
24 would accept him and relate to him as a human being. I think  
25 he responded positively, and I see that as a good prognastic

1 sign.

2 THE COURT: Thank you, Doctor, you may step down,  
3 you're excused.

4 At this time the doctor is still a witness  
5 of the Court, at least that's how he was brought. They tell  
6 me that there is no specific basis for him to be sure he's  
7 paid, so I'm telling you both here and now, you're each  
8 responsible for 50 percent of the doctor's bill.

9 You may call the next witness.

10 MR. GUBBINS: Your Honor --

11 THE COURT: I know, you paid it. But I told you  
12 before that he's not your witness, he's the Court's witness,  
13 so you have an obligation to give the City an opportunity to  
14 pay.

15 MR. GUBBINS: Okay.

16 THE COURT: They have been dieing to get your bill.

17 MR. GUBBINS: Our last witness is Mr. Wzorek.

18 THE COURT: Put him on, please.

19 MR. GUBBINS: I'm just concerned about your 12:00  
20 o'clock.

21 THE COURT: I blew it. This is more important.

22 EUGENE WZOREK, PLAINTIFF'S WITNESS SWORN

23 DIRECT EXAMINATION

24 BY MR. GUBBINS:

25 Q. Mr. Wzorek, have you been able to find work since

1 November of 1988?

2 A. No.

3 Q. Have you been able to -- have you gone out to seek work  
4 since November of 1988?

5 A. No, I haven't.

6 Q. Why haven't you gone out?

7 A. I have been on some medication, you know, and I don't  
8 feel like going out or nothing.

9 Q. Have you received any money whatsoever in the way of  
10 compensation for anything you've done?

11 A. No.

12 Q. Your income has been zero?

13 A. For myself, yes.

14 Q. Have you seen any doctor for your illness since November  
15 of 1988?

16 A. Yes, but I haven't gotten the medicine all the time. I  
17 would just go see the doctor, and I couldn't always afford  
18 the medicine, so that's why maybe it wasn't working that  
19 good. I didn't have enough money to buy it.

20 THE COURT: Did the doctor know that?

21 THE WITNESS: No, he didn't know it all the time.

22 BY MR. GUBBINS:

23 Q. Mr. Wzorek, where do you live now?

24 A. 4343 South Honore.

25 Q. Who do you live there with?



1 A. Upstairs in a flat from my mom.  
 2 Q. She owns the building?  
 3 A. Um-hum.  
 4 Q. How old is your mother?  
 5 A. About 62, I think.  
 6 Q. Do you know what level of education she has?  
 7 A. I don't know for sure.  
 8 Q. Do you know if she went to college?  
 9 A. No, she didn't.  
 10 Q. Do you know if she finished high school?  
 11 A. I don't think so.  
 12 Q. Does anybody live there with you?  
 13 THE COURT: Did she go to high school?  
 14 THE WITNESS: Who?  
 15 THE COURT: Your mother.  
 16 THE WITNESS: I really couldn't tell you, Your  
 17 Honor. My wife comes on the weekend, because we have another  
 18 house, and we're selling that to pay my bills.  
 19 BY MR. GUBBINS:  
 20 Q. Have you sold your house yet?  
 21 A. No, they are still fixing the floors and painting.  
 22 Q. Have you traveled outside of the house that you live at  
 23 with your mother?  
 24 A. Once in a while. I don't go out all the the time, just  
 25 to go to you, the court, and the doctor.

1 Q. Have you ever gone out to a movie from your residence?  
 2 A. No, not at all.  
 3 Q. Have you ever gone out to a restaurant?  
 4 A. Not from the new place.  
 5 Q. Have you ever gone out to a party or followed up on a  
 6 social invitation you have had for a party outside?  
 7 A. No.  
 8 Q. So basically you only left the house to visit your  
 9 doctors or your lawyer or to come to court?  
 10 A. Yes. Or to take my mom.  
 11 THE COURT: Do you go to the ballpark?  
 12 THE WITNESS: I used to go.  
 13 THE COURT: When is the last time?  
 14 THE WITNESS: Before I got fired.  
 15 THE COURT: When is the last time you went to a  
 16 football game?  
 17 THE WITNESS: Before I got fired.  
 18 BY MR. GUBBINS:  
 19 Q. Have you received any visits from friends at your new  
 20 residence?  
 21 A. The only time is Freddie, when he gave us a lift by your  
 22 place.  
 23 Q. Have you had any regular visitors at your residence?  
 24 A. No, not really.  
 25 Q. How do you come to have food to eat?

1 A. My mom, when she makes dinner she will bring something  
2 up, or my wife.

3 Q. Who cleans your clothes?

4 A. They wash the clothes downstairs in the washing machine,  
5 my mother and wife when she comes. My wife stays over at the  
6 other place, because it's closer to her work, until we sell  
7 the house.

8 THE COURT: You were having trouble with her  
9 before. You're not now?

10 THE WITNESS: No. At that time it was real  
11 difficult, but now she understands what's going on.

12 BY MR. GUBBINS:

13 Q. Okay. That's been since the Court's order?

14 A. Yes.

15 Q. Okay. Are you -- do you have any worries during the  
16 time that --

17 A. I'm tired of going to court all the time.

18 Q. What do you think about during the day?

19 Let me ask you this. What do you do during  
20 the day?

21 A. Watch some TV, take the dog in the backyard, that's it.

22 Q. Do you sleep?

23 A. Yes, I sleep.

24 Q. Do you worry about anything while you're spending your  
25 time?

1 A. The bills and that.

2 Q. So you think about the bills. How frequently do you  
3 think about the bills?

4 A. Every hour.

5 Q. Do you think about going back to work, do you worry  
6 about that?

7 A. Yes, I would like to go back and do what I used to do.

8 Q. Do you worry about being able to work?

9 A. I would like to try.

10 Q. Do you think that you might not be able to work? Does  
11 that thought cross your mind?

12 A. No, I just want to go back to 1984.

13 Q. What else worries you?

14 A. Well, I can't get the medicine all the time. When I get  
15 the medicine I feel better.

16 MR. GUBBINS: No further questions, Your Honor.

17 THE COURT: Do you ever have a beer?

18 THE WITNESS: A what?

19 THE COURT: Do you ever have a beer?

20 THE WITNESS: I think the last time I had a drink  
21 was in 1977.

22 THE COURT: You don't go out with the guys?

23 THE WITNESS: I used to go with them, but I would  
24 drink soda.

25 THE COURT: Do you ever go anyplace, to a soda

1 fountain or tavern?

2 THE WITNESS: I used to. Not now, it's too hard.  
3 I'm in a different neighborhood. When you go out you always  
4 hear people asking what's happening, is it over. You don't  
5 want to hear it.

6 THE COURT: Do you bowl?

7 THE WITNESS: I like pingpong. I don't like bowling  
8 that much.

9 THE COURT: Do you play pingpong?

10 THE WITNESS: I used to.

11 THE COURT: Have you done it lately?

12 THE WITNESS: No.

13 THE COURT: You said, Mr. Wzorek, that you would  
14 like to go back to work. The doctor said he didn't think you  
15 really felt like you could go back to where you were before.

16 THE WITNESS: The point is you're scared and that,  
17 but you know what I mean, you're scared, and you figure  
18 you're going to get a rough time, but what are you going to  
19 do? You got to make money somewhere.

20 THE COURT: Are you telling me you think that you  
21 could go back to Streets and Sanitation and work there?

22 THE WITNESS: I would try if somebody gave me a  
23 chance.

24 THE COURT: Do you want to?

25 THE WITNESS: I'm a little scared. I would be

1 nervous, but I would try.

2 THE COURT: Nobody is going to tell you to. The  
3 question is would you want to.

4 THE WITNESS: I would like to go back to what I was  
5 doing.

6 THE COURT: Do you think you could cut it?

7 THE WITNESS: I could maybe try.

8 THE COURT: What would you worry about?

9 THE WITNESS: Well, the point is that they would  
10 probably try to get even with me for what I had done.

11 THE COURT: Who?

12 THE WITNESS: The City. They make it rough a lot of  
13 times when guys would come back they would make it a little  
14 rough or make the job hard where they would eventually get  
15 rid of you. You couldn't take the pressure. I've seen guys  
16 that happened to.

17 THE COURT: They changed administrations.

18 THE WITNESS: But it's the same old game, the  
19 players have changed, but you're still an enemy.

20 THE COURT: What about the county?

21 THE WITNESS: I never thought of the county. I  
22 guess it's part of the system, but once you make that  
23 headline, that's what I was worried about, once you get your  
24 -- you fight back, I don't think you are in good standing.

25 THE COURT: What about the Sanitary District?

1 THE WITNESS: I don't know nothing about it. Is  
2 that all the same system?

3 THE COURT: No, they are all different government  
4 bodies. I'm just asking.

5 THE WITNESS: I never thought about it.

6 THE COURT: What do you think about, if you think  
7 about not going back to the city, where do you think about  
8 working at?

9 THE WITNESS: I like driving a truck, because to me  
10 that was relaxing, being out in the open and moving around.

11 THE COURT: Okay. Mr. Ex?  
12 Oh, it's Ms. Smith.

13 MS. SMITH: If I could just have a moment with  
14 Mr. Ex.

15 THE COURT: Surely.

16 CROSS EXAMINATION

17 BY MS. SMITH:

18 Q. Mr. Wzorek, you stated that you have not applied for any  
19 jobs since the last time you were before the Court.

20 A. Yes, since the last time I was here.

21 Q. How do you support yourself?

22 A. Well, my wife works, and then my relatives, you know,  
23 borrow some money from my mom and stuff like that.

24 Q. I'm sorry, your wife and who else?

25 A. My mom borrows money from her pension and her savings

1 funds. She helps out.

2 Q. I see. Are you covered by your wife's insurance, do you  
3 know?

4 A. Not that I know. I really don't know nothing about  
5 that.

6 Q. Where does she work?

7 A. American Bank Note.

8 Q. What's her position?

9 A. She used to just make money. I mean they make foreign  
10 money.

11 THE COURT: She works for what?

12 THE WITNESS: American Bank Note.

13 THE COURT: Bank Note?

14 THE WITNESS: Yeah, they make foreign money.

15 THE COURT: It's a printing company?

16 THE WITNESS: Yeah.

17 THE COURT: Do you know what she does?

18 THE WITNESS: I think she's a supervisor, but she's  
19 still only works 35 hours a week usually.

20 BY MS. SMITH:

21 Q. Do you know where that's located, Mr. Wzorek?

22 A. It's in Burbank, West 74th Place somewhere, West 75th  
23 Place.

24 Q. Okay.

25 THE COURT: Do you know how much she makes?



1 THE WITNESS: I think she's making \$11 or \$12 an  
2 hour, something like that.

3 THE COURT: 35 hours?

4 THE WITNESS: Yes, it's usually 35 hours unless they  
5 get overtime, but that's the base.

6 THE COURT: Okay. More than \$300 a week?

7 THE WITNESS: Could be, yes.

8 THE COURT: 400?

9 THE WITNESS: I don't think it's that much.

10 THE COURT: 350?

11 THE WITNESS: Could be about that. I would have to  
12 find out.

13 BY MS. SMITH:

14 Q. Is that how you paid your medical bills to Dr. Borden?

15 A. I would borrow money off my mom to go see Dr. Borden  
16 like at certain times, but he would want me to come in more  
17 often than three times a week, and if I would take the  
18 medicine then things would turn around, but if I came in  
19 helter skelter he says it's hard, you know.

20 THE COURT: For him or you?

21 THE WITNESS: For me, to adjust.

22 BY MS. SMITH:

23 Q. Did you ever try to have these bills from Dr. Borden  
24 paid through your wife's insurance?

25 A. I didn't know nothing about that, because when she was

1 working over there and some other ladies, they had their  
2 insurance, and when they had too high a bill, they would get  
3 rid of them. So you're afraid they'll lose their job.

4 Q. When you took these medications Dr. Borden gave you, did  
5 they help you?

6 A. The Kanax me, and the Sinequan helped me. Some of them  
7 I didn't react right. They give you headaches or different  
8 symptoms so you change them, but like I said, I couldn't get  
9 the medicine all the time.

10 Q. When you took it, it did help you feel better?

11 A. Yes, it did help me, yes.

12 Q. Aside from being seen by Dr. Borden eight or nine times,  
13 have you been seen by anyone else?

14 A. Doctor Weiss, just once or twice. That would be for the  
15 colitis and that.

16 Q. Doctor Weisman?

17 A. Yes.

18 Q. So you have not sought treatment at any local mental  
19 health center?

20 A. No.

21 Q. I didn't hear your address, sir, when I was sitting back  
22 there?

23 A. Well, 4344 South Honorie.

24 Q. Do you still live in the Back of the Yards neighborhood?

25 A. That's where it's at. Before that I was in the Ford

1 City area.

2 Q. Did you ever seek help at the City mental health center  
3 located in the Back of the Yards?

4 A. I didn't know nothing about anything like that.

5 Q. You never went to the Back of the Yards Mental Health  
6 Center at 824 with West 47th Street?

7 A. No.

8 Q. Did you ever ask Dr. Borden if there were any other  
9 mental health professionals available for you?

10 A. We talked a few times about certain stuff, but he  
11 figured a treatment over a certain amount of time if I would  
12 get it regular would help me.

13 Q. So he never mentioned to you that there were free mental  
14 health centers?

15 A. No.

16 Q. Did you ever ask Dr. Borden if there were any state or  
17 city funded ways for you to obtain your medication?

18 A. No, I never asked.

19 THE COURT: Did he ever tell you about them?

20 THE WITNESS: No.

21 BY MS. SMITH:

22 Q. Did you inform Dr. Borden that you were at times unable  
23 to pay for your medicine?

24 A. Yes.

25 Q. What would Dr. Borden say?

1 A. What would he say; I don't know how to relate to that  
2 question. When you see somebody, you know when you're  
3 writing out a bill you get embarrassed that you can't pay, so  
4 you try to pay and borrow the money. How could you react --  
5 he didn't say nothing like that.

6 Q. He never told you that there were means for you to get  
7 your medication without paying for them?

8 A. No, because we own property, a house and that, and you  
9 can't do that when you own a home. You can't get stuff for  
10 free if you have property.

11 Q. The house is in your wife's and your name?

12 A. Yes.

13 THE COURT: Does it have a mortgage on it.

14 THE WITNESS: Yes.

15 BY MS. SMITH:

16 Q. Who resides in the home now?

17 A. My son and wife. My wife comes on the weekends, but  
18 like I said, they are just there to clean it up so it can be  
19 sold. I think Century 21 is going to do it for us.

20 Q. So it is on the market now?

21 A. We ain't got nobody to paint or do that stuff so they  
22 have to do it themselves. So in between her job, and my son  
23 tries to do it. It's a big house, raised ranch.

24 THE COURT: Where.

25 THE WITNESS: By the Ledger Company, by 75th and

1 Ridgeway, right off Pulaski, Ford City.

2 BY MS. SMITH:

3 Q. Do you ever help out in cleaning up the house?

4 A. I would, but we have dogs, so I keep the dogs where we  
5 are at, because they couldn't survive with all that cleaning  
6 and varnish, so I stay over here on 43rd while they are  
7 there, but then she comes over on the weekends.

8 Q. Since you were last here in court, Mr. Wzorek, or at any  
9 time did you ever apply for disability benefits with the  
10 Social Security Administration?

11 A. I always was told I couldn't get no Social Security. I  
12 always worked for the City.

13 Q. Who told you that?

14 A. People, whoever I was talking to. I don't know.

15 Q. Did you hold jobs with other employers before you went  
16 to the City?

17 A. I was with the City since '64, in a different capacity.  
18 I was on the garbage truck.

19 Q. Prior to then you had no other employment?

20 A. No. No other employment before '64. Part time maybe,  
21 but nothing like full time.

22 Q. Do you drive a car these days?

23 A. Seldom. Once in a while. My car is broke anyway.

24 THE COURT: What do you mean it's broke?

25 THE WITNESS: The transmission is gone on it, and I

1 think the engine.

2 THE COURT: When is the last time you drove it?

3 THE WITNESS: That car?

4 THE COURT: Any car.

5 THE WITNESS: Today.

6 THE COURT: To come here?

7 THE WITNESS: Yes, because I didn't take any  
8 medicine.

9 THE COURT: If you take the medicine can you drive?

10 THE WITNESS: Yes, sometimes.

11 THE COURT: What's the difference?

12 THE WITNESS: It depends how much you take or how  
13 you're feeling.

14 THE COURT: Tell me about that.

15 THE WITNESS: Sometimes you get the feeling where  
16 things are closing in on you or something. Then you can't  
17 drive.

18 THE COURT: The medicine does that?

19 THE WITNESS: I think so. It just worsens those  
20 symptoms, so I don't drive. When I don't take it then I can  
21 drive.

22 THE COURT: When you do drive, do you drive by  
23 yourself?

24 THE WITNESS: No, I have my uncle with me when I  
25 come to court, or someone else. In that case, they can

1 drive.

2 THE COURT: Is your uncle here now?

3 THE WITNESS: Yes, he's right there.

4 BY MS. SMITH:

5 Q. In the last several months have you ever driven your car  
6 by yourself anywhere?

7 A. I don't remember anything like that. Like I said, for  
8 several months I was with John Gubbins, and he'll tell you I  
9 have been with my uncle, or my mom if I want to take her  
10 someplace, but no, I don't remember being by myself.

11 Q. Would you feel comfortable driving by yourself today?

12 A. I don't know. I feel a little funny. I don't know.

13 Q. Is that from the medication?

14 A. I really don't know.

15 Q. Okay. Dr. Fawcett indicated that you're afraid to talk  
16 to people.

17 A. Yes, sort of.

18 Q. You stated that you talked to Mr. Gubbins, your  
19 attorney.

20 A. Yes.

21 Q. Do you ever talk to John Lucil?

22 A. Yes.

23 Q. How often do you talk to him?

24 A. When he calls me up.

25 Q. Do you know how frequently that is?

1 A. Gee, I couldn't tell you. It could be once in a while,  
2 once a day, every second day or something like that, ask how  
3 are you doing and stuff.

4 THE COURT: Who is he?

5 THE WITNESS: Back there.

6 THE COURT: Okay.

7 BY MS. SMITH:

8 Q. And you talked to Dr. Borden when you visited him?

9 A. Oh, yes.

10 Q. You talk to your wife and your son?

11 A. Oh, of course.

12 Q. And you talk to your uncle and mother?

13 A. Um-hum.

14 Q. Are there any other social acquaintances that you still  
15 talk to?

16 A. Freddie, the guy that gave us a lift.

17 Q. Freddie Jones?

18 A. No, Fred Rightis.

19 Q. Doctor Borden's notes indicate that you talk to  
20 newspaper reporters; is that true?

21 A. When this incident came about they would call up and ask  
22 questions and stuff like that.

23 Q. Did you talk to them?

24 A. I talked to only one or two, but Linda Freeman would  
25 call me first and tell me it was okay to talk to them.



1 Q. Who was Linda?

2 A. This attorney that used to be with Mr. Gubbins.

3 THE COURT: Do you know who you talked to?

4 THE WITNESS: I think it was the Boston Globe, and  
5 sometimes the LA Times or something like that.

6 BY MS. SMITH:

7 Q. Does the name Charles Nicodemus sound familiar?

8 A. Yes.

9 Q. Who is he?

10 A. I think Sun Times reporter.

11 Q. How many times have you talked to him?

12 A. I couldn't tell you.

13 Q. More than three?

14 A. I don't think so, because I only met him by  
15 Mr. Gubbins. I think once or twice, that's it. Mr. Gubbins  
16 would have him there. I never talked to him on the phone or  
17 nothing like that.

18 Q. Mr. Wzorek, you stated that you believe the City would  
19 make it hard on you.

20 THE COURT: You should be interested that the  
21 newspaper reporters have been kind of aggressive, even to the  
22 point of finding my private unlisted telephone number and  
23 calling me on the weekend, which I told them anything they  
24 wanted they could get out of the public record.

25 MS. SMITH: They sure are.

1 THE COURT: Some, not all. They said the Mayor of  
2 Chicago talks to us. I told them he has to run for office.

3 BY MS. SMITH:

4 Q. Have you talked to any other reporters other than  
5 Mr. Nicodemus?

6 A. Not that I recall.

7 Q. You stated if you went to work for the City again that  
8 the City would make it hard on you. Who are you referring to  
9 when you say that?

10 A. That's a broad sense. You know what I mean, Your  
11 Honor. Whatever.

12 Q. Are you talking about the head of a department?  
13 Commissioner?

14 A. It could be the head of a department. Politics, it  
15 could be anything that's involved at the City.

16 Q. You're not just referring to city employees, you're also  
17 referring to city politicians?

18 A. Yes, the City in general.

19 THE COURT: What if the City legal department told  
20 your bosses, don't mess with Wzorek, would that make you feel  
21 better.

22 THE WITNESS: I think they were the ones that were  
23 messing with me, the legal department.

24 THE COURT: If I told them not to mess with you?

25 THE WITNESS: I would believe you.

1 THE COURT: Would that make you feel more  
2 confident?

3 THE WITNESS: If you told them don't do it, I guess.

4 BY MS. SMITH:

5 Q. So you could return to work if Judge Duff issued such an  
6 order?

7 A. It's possible.

8 Q. Judge Duff also mentioned that the current  
9 administration is the Richard Daley administration.

10 A. Um-hum.

11 Q. But you said it's the same old game, you don't think  
12 anything would change, given the fact that your sponsor is  
13 now the Mayor?

14 A. Look how long they have been here, and they have been  
15 doing all the same thing, isn't it? If it would have been  
16 the other administration they would have been doing the same  
17 thing.

18 Q. When you say doing the same thing --

19 A. Holding back on whatever they are doing.

20 Q. You mean in terms of your lawsuit?

21 A. Legal things, and not going back to work, and Your  
22 Honor, why I had those doctors visits in a row is that first  
23 Linda Freedman says you're going to get the money to get  
24 better health care, so that's why I went so many times.

25 I figured I was getting the paycheck money,

1 and I would take it and it would be better, but somehow I  
2 didn't get no money. Then I just ran out of the money, and I  
3 had all those visits.

4 THE COURT: You understand the lawyers have to do  
5 their best for their client, don't you?

6 THE WITNESS: I understand.

7 THE COURT: It doesn't mean they have to agree with  
8 you or me; you understand that, don't you?

9 THE WITNESS: I figured if you're wrong, you're  
10 wrong.

11 THE COURT: All right.

12 MS. SMITH: If I could just have a moment with my  
13 co-counsel.

14 No further questions.

15 THE COURT: Mr. Gubbins?

16 MR. GUBBINS: No redirect, Your Honor.

17 THE COURT: Mr. Wzorek, is there anything you want  
18 to say?

19 THE WITNESS: I just had the feeling that I was like  
20 being cheated or something.

21 MS. SMITH: Your Honor, I can't hear Mr. Wzorek. I'm  
22 sorry. If you could speak louder.

23 THE WITNESS: I'm not a loud speaker.

24 I just felt in a way that sometimes I was  
25 being cheated. Like when I was doing the case, and like on

1 day two or so, the transcripts when I read them didn't seem  
2 the same as what I said in the courtroom. So I was wondering  
3 about that, so I thought in my mind I felt I was being  
4 cheated again.

5 THE COURT: Interesting. Well, for whatever it's  
6 worth, the transcripts were accurate.

7 THE WITNESS: They were?

8 THE COURT: Oh, yes. Even the best lawyers in town  
9 don't always exactly hear what they are saying themselves.  
10 That's why they have two people at a table. You were doing  
11 it all by yourself. The transcripts were very good.

12 THE WITNESS: I felt day two was wrong.

13 THE COURT: The transcripts were very good. You can  
14 step down.

15 MR. GUBBINS: We have no further witnesses, Your  
16 Honor.

17 THE COURT: Okay. Mr. Ex? Ms. Smith?

18 MS. SMITH: The only other matter concerns the  
19 stipulations that we have agreed to regarding the various  
20 figures.

21 THE COURT: Are you going to put on anything?

22 MR. EX: At this point, Your Honor, Mr. Gubbins  
23 rested. We have no further witnesses or rebuttal.

24 THE COURT: Do this; make up your stipulations, put  
25 them in written form and give them to me, but soon, because I

1 think the delays that have gone on in this case are just  
2 totally inappropriate. I'm leaving town, so I want those  
3 stipulations fast.

4 MR. GUBBINS: Are you leaving like Monday?

5 THE COURT: Like Friday. I may be around, but the  
6 court won't be open next week.

7 MR. GUBBINS: What I would like to do then, we could  
8 file them tomorrow by 10:00.

9 THE COURT: Please do.

10 MR. GUBBINS: I would like to file at the same time  
11 a list of what we think are the damages that we would  
12 request.

13 THE COURT: You can do that, but also all of you can  
14 propose, if you wish, remedies.

15 MR. GUBBINS: Thank you very much, Your Honor.

16 THE COURT: I know Mr. Ex and Ms. Smith have done  
17 some work evidently in discovering what is available, at  
18 least I gathered as much from some of the questions. I would  
19 be quite interested.

20 MR. EX: Your Honor, if we may, would it be all  
21 right for the City to file its brief or memorandum on damages  
22 in response to Mr. Gubbins so that we would have an  
23 opportunity --

24 THE COURT: Can you get it to me before I leave,  
25 Friday?

1 MR. GUBBINS: I'll get it done tomorrow.

2 MR. EX: That would be all right if I could get the  
3 proposal or Mr. Gubbins' version.

4 THE COURT: Get it to him tomorrow at 10:00, and get  
5 yours to me by Friday afternoon at 5:00 o'clock. Let's say  
6 4:00 o'clock just in case.

7 THE COURT: All right. Court is adjourned.

8 REPORTED BY: Colette M. Kuenneth

9  
10 C E R T I F I C A T E

11  
12 I certify that the foregoing is a correct transcript  
13 from the record of proceedings in the above-entitled case on  
14 August 16, 1989.

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*Theresa A. Pustogi*  
Court Reporter

*9/18/89*  
Date

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**Attachment D:**

Guide to Judiciary Policy

Volume 6, Court Reporting

Last revised 1 May 2018

(Transmittal 06-011)

as excerpted for:

Chapter 1: Overview

**§ 110 Purpose**

**§ 120 Authority**

# Guide to Judiciary Policy

Vol. 6: Court Reporting

## Ch. 1: Overview

110 Purpose

120 Authority

120.10 Court Reporter Matters Addressed in Volume 6

130 Applicability

140 Definitions

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### § 110 Purpose

This volume provides guidance on the use of court reporting and electronic sound recording methods of keeping the record in applicable federal courts and to outline the tasks and responsibilities of the court and court reporter. It also provides references and links to other statutory and policy guidance regarding court reporters. The responsibility to administer reporting services lies with each court, consistent with the requirements established by statute and by the Judicial Conference that each court must fulfill.

### § 120 Authority

The Court Reporters Act (28 U.S.C. 753) requires that each session of the court and every other proceeding designated by rule or order of the court be recorded verbatim by a court reporter or electronic sound recording (ESR), and establishes the duties and conditions of employment of court reporters in the federal courts. The chart below outlines key topics of the Court Reporters Act, other statutes, and Judicial Conference policies found within this volume of the *Guide*.

*Last revised (Transmittal 06-011) May 1, 2018*

**Attachment E:**

718 F.Supp. 1386

Eugene Wzorek, Plaintiff  
v  
City of Chicago et al, Defendant

#84-CV-9978  
06 September 1989

United States District Court, N.D. Illinois, Eastern Division.

Eugene WZOREK, Plaintiff,

v.

CITY OF CHICAGO, an Illinois municipal corporation, Defendant.

No. 84 C 9978.

Sept. 6, 1989.

Action came for hearing on issue of reinstatement of former city employee and for additional relief. The District Court, Brian Barnett Duff, J., held that: (1) former city employee would not be reinstated, and (2) city was required to provide for former city employee's psychiatric treatment for the next two years up to the amount of \$150,000.

Ordered accordingly.

## **West Headnotes (4)**Collapse West Headnotes

Change View

1Municipal Corporations



Reinstatement

Severely depressed former city employee, who was discharged because of political associations, would not be reinstated to former position as truck driver; former employee's medications rendered him unfit for driving as part of his regular work and his suspiciousness of city and its employees prevented him from working for city.

Cases that cite this headnote



268Municipal Corporations

268VOfficers, Agents, and Employees

268V(C)Agents and Employees

268k218Removal, Discharge, Transfer or Demotion

268k218(11)Reinstatement

2Civil Rights



Monetary Relief; Restitution

In cases brought under Title VII and Age Discrimination in Employment Act, trial court may award front pay when reinstatement is inappropriate. Civil Rights Act of 1964, § 701 et seq., as amended, 42 U.S.C.A. § 2000e et seq.; Age Discrimination in Employment Act of 1967, § 2 et seq., 29 U.S.C.A. § 621 et seq.

Cases that cite this headnote



78Civil Rights

78IVRemedies Under Federal Employment Discrimination Statutes

78k1569Monetary Relief; Restitution

78k1570In General

(Formerly 78k400.1, 78k400, 78k46(12), 78k46(18))

3Municipal Corporations



Compensation After Discharge, Suspension, or Retirement

City employee, who was discharged because of political associations and who would not be reinstated based on his present severe depression, was entitled to front pay.

Cases that cite this headnote



268Municipal Corporations

268VOfficers, Agents, and Employees

268V(C)Agents and Employees

268k220Compensation

268k220(6)Compensation After Discharge, Suspension, or Retirement

4Municipal Corporations



Compensation After Discharge, Suspension, or Retirement

City was required to provide for psychiatric treatment for former city truck driver, who was discharged because of his political associations and who suffered emotional problems because of his discharge, for two years up to the amount of \$150,000 as equitable means of providing for former employee's psychiatric care.

Cases that cite this headnote



268Municipal Corporations

268VOfficers, Agents, and Employees

268V(C)Agents and Employees

268k220Compensation

## Attorneys and Law Firms

\*1386 John L. Gubbins, John L. Gubbins & Associates, P.C., and Linda Friedman, Chicago, Ill., for plaintiff.

A. Charles Ex, Corp. Counsel, City of Chicago, Chicago, Ill., for defendant.

### FINDINGS OF FACT AND CONCLUSIONS OF LAW

BRIAN BARNETT DUFF, District Judge.

This action came before this court for hearing on the issue of reinstatement and additional relief for petitioner Eugene Wzorek on August 16, 1989. The court has heard the evidence and has considered the testimony, exhibits, stipulations, memoranda of law and arguments of counsel. The court also has noted its prior findings of fact in this case. See Wzorek v. City of Chicago, 708 F.Supp. 954, 955-59 (N.D.Ill.1989). Now fully advised in the premises, \*1387 the hearing having been concluded, the court finds these facts:

1. The court issued its previous award to Wzorek on March 21, 1989. Between the date of that order and the date of the hearing, had Wzorek been working, he would have earned \$14,500.00 as a Motor Truck Driver for the City of Chicago. The amount of interest on this amount would be \$362.50.
2. In the opinion of the psychiatrist whom the court has appointed for this case, Dr. Jan Fawcett, M.D., Wzorek suffers from an incompletely resolved depression, which may have psychotic features. Wzorek also suffers from severe agoraphobia. His illnesses are such that they totally inhibit his ability to function socially in the workplace. He also is deeply suspicious of the reception he would receive from his fellow employees were this court to reinstate him to his former position with the City. Wzorek, however, still desires reinstatement.
3. Wzorek has visited his personal psychiatrist eight or nine times since November 1988. He takes anti-depressant medications which cause slow reactions, sedation, dizziness, and fainting. He occasionally has not obtained his prescriptions for lack of money.
4. Wzorek's present condition is such that he needs more intensive treatment than what he receives presently to restore him to his former capacity to work and enjoy life. Such treatment could last from one to two years, and cost from \$50,000 to \$150,000. Unless Wzorek begins this treatment soon, there is an increased risk that Wzorek's disabilities will become fixed and incurable. Publicly supported programs could provide elements of this treatment, but none provide the full range of care that Wzorek requires. Wzorek has not sought out any publicly financed programs.
5. Wzorek's future wages for a one-year prospective period have a present value of \$33,518.17.

### CONCLUSIONS OF LAW

The court relies in great part on its prior conclusions in Wzorek, 708 F.Supp. at 959–61. As a preliminary matter, this court must amend its previous order as to the amount of back pay and prejudgment interest. The Court of Appeals has instructed this court that its previous order was not final, and thus the back pay “clock” has continued to elapse, making what was front pay then back pay now. Accordingly, the court increases the amount of its award of back pay by \$14,500, and its award of prejudgment interest by \$362.50.

1 The main issue for the present hearing was whether the court should reinstate Wzorek to his former position as a Motor Truck Driver for the City of Chicago. In making this decision, the court must consider all of the facts, but foremost among these is whether Wzorek is presently qualified for the position which he seeks. See id. at 960.

Based on the testimony presented at the hearing, this court concludes that Wzorek is not presently qualified as a Motor Truck Driver for the City of Chicago. He is severely depressed. His medications render him unfit for driving a truck as part of his regular work. He also is suspicious of the City and its employees, which prevents him from working for the City at this time. The court will thus not reinstate Wzorek to his former position.

2 In lieu of reinstatement, Wzorek asks this court to award him front pay. In cases brought under Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000e et seq. (1982), and the Age Discrimination in Employment Act (“ADEA”), 29 U.S.C. §§ 621 et seq. (1982), the court may award front pay when reinstatement is inappropriate. See Reeder–Baker v. Lincoln Nat. Corp., 649 F.Supp. 647, 664 (N.D.Ind.1986), aff’d 834 F.2d 1373 (7th Cir.1987) (Title VII); McNeil v. Economics Laboratory, Inc., 800 F.2d 111, 118–19 (7th Cir.1986) (ADEA). The aim of front pay under those statutes is to assist the aggrieved individual as he or she prepares for another job. See Reeder–Baker, 649 F.Supp. at 664; Fadhl v. City and County of San Francisco, 741 F.2d 1163, 1167 (9th Cir.1984).

\*1388 Title VII and ADEA treatments of front pay are not binding upon this case. Each statute is a legislative response to a specific problem. Each provides remedies that are labelled “equitable,” but at bottom these remedies are legal, as they flow from Congress’s powers. This case by contrast is equitable, as it is a civil contempt proceeding under the Shakman decree. See Wzorek, 708 F.Supp. at 959. Nevertheless, Title VII and ADEA cases are instructive, as they indicate the interests which the court should consider in fashioning remedies for a person who has lost his or her job.

3 This court thus should balance Wzorek’s interest in being compensated as he would have been had he remained an employee of the City with the interest of the citizens of the City in encouraging Wzorek to find alternative employment. The record of this case reveals that Wzorek might not achieve this latter goal; nevertheless, the court must fashion a remedy designed to move him toward it.

As found above Wzorek must obtain more intensive psychiatric treatment if he is to return to the work force. This could last one to two years. Based on the evidence presented, the court believes that Wzorek's desire to obtain treatment and return to work will hasten Wzorek's recovery. The court thus will award front pay to Wzorek for one year, which has a present value of \$33,518.17. If his treatment ends up taking longer than one year, he can petition this court for further relief.

4 This leaves the court with one last question: who should pay for Wzorek's treatment? The court had hoped when it awarded Wzorek back pay, pre-judgment interest, and medical and prescription expenses that Wzorek would have the resources to get the care he desperately needs. Had he begun treatment sooner, his condition might have been corrected more easily, and with less expense. The court did not anticipate that Wzorek would be caught in the throes of an argument over when equitable remedies are final—as if equity in a case such as this one is ever once and for all. Wzorek and the City share responsibility for Wzorek's future care. As noted in this court's previous ruling, the City's willful violation of the *Shakman* decree entitles Wzorek to recover damages resulting from that violation. See Wzorek, 708 F.Supp. at 960. By this point, however, it is not clear to what degree Wzorek's present condition is the result of the City's original violation. The violation has contributed to his condition, but now inadequate care looms as a significant cause. The reason for this inadequate care is lack of resources, but that only begs the question: why does Wzorek lack resources? In part, because the City fired him. See id. at 959. In part, because Wzorek has not obtained money on account of any ruling of the courts. Another reason could be that Wzorek has not sought public assistance, although his eligibility for that assistance is a matter of speculation. Even if he were eligible, there is no evidence that these programs would provide him with the care that he requires.

The parties have separate proposals. Wzorek asks for \$150,000, the higher limit of what his care would cost. The City argues that if it should pay anything toward Wzorek's future care, it should be an amount equal to Wzorek's premiums for substitute insurance coverage—an amount which is zero, as Wzorek has not purchased alternative insurance. Neither party attacks the method that the other uses for preparing its proposal, but it is apparent that each has its flaws. It is not clear, for example, whether Dr. Fawcett's estimated cost of care was a present value, which would be lower than \$150,000. The parties also did not propose a package of, for example, public and private care, coordinated either by Dr. Fawcett or a special master, which could achieve the same result for less. The City for its part avoids confronting the reasons for Wzorek's failure to purchase substitute insurance. Wzorek has no money to buy insurance, see id., and the City never has proven that Wzorek is even insurable. Its proposal is a non-proposal.

The court has to work with the tools which the parties have provided, crude as \*1389 they may be. Accordingly, this court orders the City to provide for Wzorek's psychiatric treatment for the next two years up to the amount of \$150,000. This is not an award of damages; rather, it is an equitable



means of providing for Wzorek's psychiatric care. If Wzorek chooses not to avail himself of this coverage, the City will end up paying nothing.

For the reasons stated in this opinion, the court increases the award of back pay entered March 21, 1989 by \$14,500.00 and its award of prejudgment interest by \$362.50. The court further awards front pay in the amount of \$33,518.17. The court orders the City to provide for Wzorek's psychiatric treatment for the next two years, beginning from the date of this order, up to the amount of \$150,000.00.

## **All Citations**

718 F.Supp. 1386

**End of Document**

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**Attachment F:**

copy, Judgement, a.k.a. the  
“Shakman Consent Decree”

MICHAEL L. SHAKMAN and PAUL M. LURIE et al,  
Plaintiffs,

v

THE DEMOCRATIC ORGANIZATION  
OF COOK COUNTY et al,  
Defendants

# 69-CV-2145

05 May 1972

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

MICHAEL L. SHAKMAN and PAUL  
M. LURIE et al.,

Plaintiffs,

vs.

No. 69 C 2145

THE DEMOCRATIC ORGANIZATION  
OF COOK COUNTY, etc., ... the  
REPUBLICAN COUNTY CENTRAL COM-  
MITTEE OF COOK COUNTY et al.,

Defendants.

JUDGMENT

Plaintiffs Michael L. Shakman and Paul M. Lurie having filed their complaint herein, and said plaintiffs (on behalf of themselves and the classes they represent under the First Amended Complaint herein as determined by previous Orders of Court) and the defendants named in paragraph C hereof having consented to the entry of this Judgment as to such parties without trial and without adjudication of any allegation in the complaint or any issue of fact with respect to the alleged commission by said defendants of any unconstitutional, unlawful or wrongful act, and without this Judgment constituting evidence of or an admission by any defendant with respect to any issue of fact herein or the commission of any unconstitutional, unlawful or wrongful act;

Now, therefore, upon the consent of the parties as aforesaid, it is hereby Ordered, Adjudged and Decreed as follows:

A. This Court has jurisdiction of the parties to this Judgment and of the subject matter of this action under Sections 1331 and 1343(3) of Title 28 of the United States Code.

B. As used herein, (1) the term "governmental employment" means any employment (whether full-time or part-time,

permanent or temporary, and regardless of whether the employment is paid for by federal funds) by or for the City of Chicago or any employment within the Northern District of Illinois by or for any other governmental entity other than an entity of the federal government; (2) the terms "governmental employee" and "employee" mean a person employed in governmental employment.

C. The provisions of this Judgment apply to each and all of the following: (1) defendant The Democratic Organization Of Cook County, a corporation; (2) defendant Democratic County Central Committee of Cook County and all members thereof; (3) defendant City of Chicago, a municipal corporation; (4) defendant Richard J. Daley, individually and as President of The Democratic Organization Of Cook County, Chairman of the Democratic County Central Committee of Cook County, Mayor of the City of Chicago and Democratic Party Ward Committeeman for the Eleventh Ward of the City of Chicago; (5) defendant Matthew Bieszczat, individually and as Secretary of The Democratic Organization Of Cook County, Secretary of the Democratic County Central Committee of Cook County, member of the Board of County Commissioners of Cook County and Democratic Party Ward Committeeman for the Twenty-Sixth Ward of the City of Chicago; (6) defendant Marshall Korshak, individually and as Democratic Party Ward Committeeman for the Fifth Ward of the City of Chicago; (7) defendant George W. Dunne, individually and as President of the Board of County Commissioners of Cook County and as Democratic Party Ward Committeeman for the Forty-Second Ward of the City of Chicago; (8) defendant P. J. Cullerton, individually and as County Assessor of Cook County and as Democratic Party Ward Committeeman for the Thirty-Eighth Ward of the City of Chicago; (9) defendant Edward J. Barrett, individually and as County Clerk of Cook County and as former Democratic Party Ward Committeeman for the Forty-Fourth Ward of the City of Chicago; (10) defendant Matthew J. Danaher, individually and as Clerk of the Circuit Court of Cook County; (11) defendant Richard B. Ogilvie, individually and as Governor of the State of Illinois; (12) defendant Edmund J. Kucharski, individually and as Chairman of the Republican County Central Committee of Cook County; (13) defendant William J. Scott, individually and as Attorney General of the State of Illinois; (14) defendant John W. Lewis, individually and as acting Secretary of State of Illinois; (15) defendant Paul Simon, individually and as Lieutenant Governor of the State of Illinois; (16) defendant Alan Dixon, individually and as Treasurer of the State of Illinois; (17) defendant Michael Bakalis, individually and as Superintendent of Public Instruction of the State of Illinois; (18) defendant Metropolitan Sanitary District of Greater Chicago, a municipal corporation; (19) defendant John E. Egan, individually and as President of the Metropolitan Sanitary District of Greater Chicago; (20) defendant Joseph C. Doring,

individually and as Sheriff of Kane County, Illinois; (21) defendant William A. Vollrath, individually and as County Clerk of Kane County, Illinois; (22) defendant Jack M. Weidner, individually and as Coroner of Kane County, Illinois; (23) defendant James H. Fitzgerald, individually and as Treasurer of Kane County, Illinois; (24) defendant Jan E. Carlson, individually and as Clerk of the Illinois Circuit Court for the Sixteenth Judicial Circuit, Kane County, Illinois; (25) defendant James A. Callahan, individually and as Sheriff of LaSalle County, Illinois; (26) defendant George L. Hunter, individually as as County Clerk of LaSalle County, Illinois; (27) defendant Ray Rathbun, individually and as Treasurer of LaSalle County, Illinois; (28) defendant Republican State Central Committee of Illinois and all members thereof; (29) defendant Victor L. Smith, individually and as Chairman of the Republican State Central Committee of Illinois; (30) defendant William F. Scannell, individually and as Secretary of the Republican State Central Committee of Illinois; (31) defendant Timothy Sheehan, individually and as Republican Committeeman for the Forty-First Ward of the City of Chicago; (32) defendant Joseph Woods, individually and as a Commissioner of Cook County; (33) defendant Floyd Fulle, individually, as a Commissioner of Cook County and as Republican Committeeman for Maine Township; (34) defendant Charles J. Grupp, individually, as a Commissioner of Cook County and as Republican Committeeman for Bloom Township; (35) defendant William N. Erickson, individually, as a Commissioner of Cook County and as Republican Committeeman for Evanston Township; (36) defendant Eugene Leonard, individually, as Bremen Township Assessor and as Republican Committeeman for Bremen Township; (37) defendant William E. Kane, individually, as Orland Township Assessor and as Republican Committeeman for Orland Township; (38) defendant John J. Nimrod, individually, as Niles Township Supervisor and as Republican Committeeman for Niles Township; (39) defendant Bernard Pederson, individually, as Palatine Township Assessor and Republican Committeeman for Palatine Township; (40) defendant John F. Kimbark, individually, as Clerk of both the Town of Cicero and Cicero Township and as Republican Committeeman for Cicero Township; (41) defendant Elmer N. Conti, individually, as President of the Village of Elmwood Park and as Republican Committeeman for Leyden Township; (42) defendant Frank A. Bella, individually, as Calumet Township Collector and as Republican Committeeman for Calumet Township; (43) the successors of each of the foregoing defendants in each of their aforesaid capacities; and to (44) the present and future officers, members, agents, servants, employees and attorneys of each of the defendants and others named or referred to hereinabove, and all others in active concert or participation with any of the defendants or others named or referred to in (1) through (44) above who receive actual notice of this Judgment by personal service or otherwise.

D. It is declared that compulsory or coerced political financial contributions by any governmental employee, contractor or supplier, to any individual or organization and all compulsory or coerced political activity by any governmental employee are prohibited, and, once hired, a governmental employee is free from all compulsory political requirements in connection with his employment. However, governmental employees may engage on a voluntary basis, on their own time, in any lawful political activity (including the making of political financial contributions).

E. Each and all of the defendants and others named or referred to in paragraph C above are permanently enjoined from directly or indirectly, in whole or in part:

(1) conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor.

(2) knowingly causing or permitting any employee to do any partisan political work during the regular working hours of his or her governmental employment, or during time paid for by public funds; provided that nothing contained in this subparagraph (2) shall prohibit governmental employees from voluntarily using vacation time, personal leave time or from taking nonpaid leaves of absence to do political work, but permission to do so must be granted nondiscriminatorily.

(3) knowingly inducing, aiding, abetting, participating in, cooperating with or encouraging the commission of any act which is proscribed by this paragraph E, or threatening to commit any such act.

F. Each defendant named or referred to in paragraph C above shall give notice of this Judgment, in the manner directed by this Court, to the employees under said defendant's jurisdiction.

G. This Judgment represents the agreed-to disposition of the claims asserted in this case by plaintiffs Michael L. Shakman and Paul M. Lurie, on behalf of themselves and the classes referred to above, against the defendants named in paragraph C above. Plaintiffs' claims for money damages, compensatory and exemplary, against the defendants named in paragraph C above are hereby dismissed.

H. Jurisdiction is retained for the following purposes:

(1) To enable the parties to this Judgment to continue to litigate the following questions before this Court:

(a) Certain governmental employment positions under the jurisdiction of the defendants who are parties to this Judgment by their nature involve policy-making to such a degree or are so confidential in nature as to require that discharge from such positions be exempt from inquiry under this Judgment. Jurisdiction is maintained to litigate the question of which governmental employment positions under such defendants' jurisdiction are so exempt for the foregoing reasons.

(b) Can political sponsorship or other political considerations be taken into account in hiring employees? If so, to what extent can such considerations be taken into account?

(c) What remedies and implementing procedures ought to be granted and established by the Court in connection with the resolution of the questions raised in the foregoing subparagraphs (a) and (b)?

(2) To enable the parties to this Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Judgment, for the enforcement of compliance with the provisions contained herein, and for the punishment of the violation of any of such provisions. Application to enforce such provisions or to impose punishment for any such violation may be presented to this Court by any registered voter. Prior written notice of all such applications and other matters in this action shall be given to the named parties hereto. Except where emergency relief is sought, 7 days written notice shall be given.

I. The Court expressly finds and determines, pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, that there is no just reason for delay and directs that this Judgment be entered forthwith.

ENTER:

ss Abraham I. Marantz  
District Judge

Dated: 5/5/72, 1972.



**Attachment G:**

Record Withdrawal Slip  
United States Court of Appeals  
for the Seventh Circuit

regarding case # 89-1868 / #89-2988,  
“Wzorek v City of Chicago”

Stating:

“Copies of the: tape was removed from [obscured] record”

“Specify: tape”

as signed by

“L. Rosenthal”

phone extension number 5818

dated 26 June 1990

Stamped:

“ON AIMS

JUL 18 1990”

Petitioner Wzorek maintains an original  
form of this document as evidence.

RECORD WITHDRAWAL SLIP

UNITED STATES COURT OF APPEALS

for the Seventh Circuit

Chicago, Illinois 60604

ON AIMS

JUL 18 1990

No. 89-1868

2988

Wzorek

vs.

City of Chicago

Tape Missing  
removed from the Clerk

copies of the

Tape was removed from record

Counsel for

Plaintiff

Defendant

Witness

Other

or (Specify)

Tape

J. Marshall

(Signature)

5818

(Phone Number)

26 Jul 1990

(Date)

Please sign and return to the Clerk of the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois.

Pursuant to Circuit Rule 11(e), no brief will be filed on behalf of an attorney or party if all parts of the record previously withdrawn are not returned to the Clerk's Office.

**Attachment G: J:**

ILLINOIS CODE OF CIVIL PROCEDURE  
AND RULES OF COURT

SMITH-HURD ANNOTATED STATUTES  
Chapter 110, Practice  
Chapter 110A, Practice Rules

FEDERAL COURT RULES

U.S. Court of Appeals for the Seventh Circuit  
U.S. District Courts of Illinois

With Amendments to Court Rules  
received to August 12, 1987

Stamped, as variously:  
"AUG 27 1987  
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excerpted as:  
pages 500 and 501,  
"Circuit Rule 11. Record on Appeal",  
subheadings (a) through (e),  
encompassing Rule 11.

**ILLINOIS**  
**CODE OF CIVIL PROCEDURE**  
**AND RULES OF COURT**

**Copy**

SMITH-HURD ILLINOIS ANNOTATED STATUTES

Chapter 110, Practice

Chapter 110A, Practice Rules

FEDERAL COURT RULES

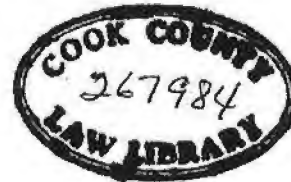
U.S. Court of Appeals for the Seventh Circuit

U.S. District Courts of Illinois

MAY 13 1993

With Amendments to Court Rules

Received to August 12, 1987



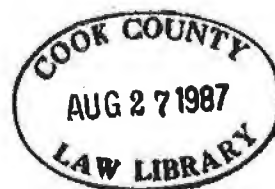
*Including*

CONSOLIDATED INDEX

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CHAPTERS 110 and 110A

**Copy**



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WEST PUBLISHING CO.

with the record a list of documents correspondingly numbered and identified with reasonable definiteness. Documents of unusual bulk or weight, physical exhibits other than documents, and such other parts of the record as the court of appeals may designate by local rule, shall not be transmitted by the clerk unless the clerk is directed to do so by a party or by the clerk of the court of appeals. A party must make advance arrangements with the clerks for the transportation and receipt of exhibits of unusual bulk or weight.

(c) **Temporary Retention of Record in District Court for Use in Preparing Appellate Papers.** Notwithstanding the provisions of (a) and (b) of this Rule 11, the parties may stipulate, or the district court on motion of any party may order, that the clerk of the district court shall temporarily retain the record for use by the parties in preparing appellate papers. In that event the clerk of the district court shall certify to the clerk of the court of appeals that the record, including the transcript or parts thereof designated for inclusion and all necessary exhibits, is complete for purposes of the appeal. Upon receipt of the brief of the appellee, or at such earlier time as the parties may agree or the court may order, the appellant shall request the clerk of the district court to transmit the record.

(d) **[Abrogated.]**

(e) **Retention of the Record in the District Court by Order of the Court.** The court of appeals may provide by rule or order that a certified copy of the docket entries shall be transmitted in lieu of the entire record, subject to the right of any party to request at any time during the pendency of the appeal that designated parts of the record be transmitted.

If the record or any part thereof is required in the district court for use there pending the appeal, the district court may make an order to that effect, and the clerk of the district court shall retain the record or parts thereof subject to the request of the court of appeals, and shall transmit a copy of the order and of the docket entries together with such parts of the original record as the district court shall allow and copies of such parts as the parties may designate.

(f) **Stipulation of Parties That Parts of the Record be Retained in the District Court.** The parties may agree by written stipulation filed in the district court that designated parts of the record shall be retained in the district court unless thereafter the court of appeals shall order or any party shall request their transmittal. The parts thus designated shall nevertheless be a part of the record on appeal for all purposes.

(g) **Record for Preliminary Hearing in the Court of Appeals.** If prior to the time the record is

transmitted a party desires to make in the court of appeals a motion for dismissal, for release, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the district court at the request of any party shall transmit to the court of appeals such parts of the original record as any party shall designate.

(Amended effective August 1, 1979; July 1, 1986.)

**Circuit Rule 11. Record on Appeal**

(a) **Order or Certification with Regard to Transcript.** Counsel and court reporters are to utilize the form prescribed by this court when ordering transcripts or certifying that none will be ordered. For specific requirements, see Rules 10(b) and 11(b), Fed.R.App.P.

(b) **Ordering Transcripts in Criminal Cases.**

(1) **Transcripts in Criminal Justice Act Cases.** At the time of the return of a verdict of guilty or, in the case of a bench trial, an adjudication of guilt in a criminal case in which the defendant is represented by counsel appointed under the Criminal Justice Act (C.J.A.), counsel for the defendant shall request a transcript of testimony and other relevant proceedings by completing a C.J.A. Form No. 24 and giving it to the district judge. If the district judge believes an appeal is probable, the judge shall order transcribed so much of the proceedings as the judge believes necessary for an appeal. The transcript shall be filed with the clerk of the district court within 40 days after the return of a verdict of guilty or, in the case of a bench trial, the adjudication of guilt or within seven days after sentencing, whichever occurs later. If the district judge decides not to order the transcript at that time, the judge shall retain the C.J.A. Form No. 24 without ruling. If a notice of appeal is filed later, appointed counsel or counsel for a defendant allowed after trial to proceed on appeal in forma pauperis shall immediately notify the district judge of the filing of a notice of appeal and file or renew the request made on C.J.A. Form No. 24 for a free transcript.

(2) **Transcripts in Other Criminal Cases.** Within 10 days after filing the notice of appeal in other criminal cases, the appellant or appellant's counsel shall deposit with the court reporter the estimated cost of the transcript ordered pursuant to Rule 10(b), Fed.R.App.P., unless the district court orders that the transcript be paid for by the United States. A non-indigent appellant must pay a pro rata share of the cost of a transcript prepared at the request of an indigent co-defendant under the Criminal

Justice Act unless the district court determines that fairness requires a different division of the cost. Failure to comply with this paragraph will be cause for dismissal of the appeal.

**(c) Extension of Time.**

(1) Requests for Extension to be Addressed to Court of Appeals. All requests for extension of time for filing the record or parts thereof shall be addressed to the court of appeals.

(2) Extension of Time for Preparation of Transcript. Any request by a court reporter for an extension of time longer than 30 days from the date the transcript was first ordered must be filed with the clerk of this court on a form prescribed by the court. The request must include the date the transcript was ordered, the reasons for both that request and any previous requests for extensions of time, and a certificate that all parties or their counsel have been sent a copy of the request. If the request is for an extension of time longer than 60 days from the date the transcript was first ordered, it must include a statement from the district judge who tried the case or the chief judge of the district court that the request has been brought to that judge's attention and that steps are being taken to insure that all ordered transcripts will be promptly prepared.

(d) Indexing of Transcript. The transcript of proceedings to be transmitted to this court as part of the record on appeal (and any copies prepared for the use of the court or counsel in the case on appeal) shall be bound by the reporter in a volume or volumes, with the pages consecutively numbered throughout all volumes. The transcript of proceedings, or the first volume thereof, shall contain a suitable index, which shall refer to the number of the volume as well as the page, shall be cumulative for all volumes, and shall include the following information:

(1) An alphabetical list of witnesses, giving the pages on which the direct and each other examination of each witness begins.

(2) A list of exhibits by number, with a brief description of each exhibit indicating the nature of its contents, and with a reference to the pages of the transcript where each exhibit has been identified, offered, and received or rejected.

(3) A list of other significant portions of the trial such as opening statements, arguments to the jury, and instructions, with a reference to the page where each begins.

When the record includes transcripts of more than one trial or other distinct proceeding, and it would be cumbersome to apply this paragraph to all the transcripts taken together as one, the rule

may be applied separately to each transcript of one trial or other distinct proceeding.

(e) Withdrawal of Record. During the time allowed for the preparation and filing of a brief or petition for rehearing, an attorney for a party or a party acting pro se may withdraw the record upon giving a receipt to the clerk, who has physical custody of the record. Original exhibits may not be withdrawn but may be examined only in the clerk's office. The party who has withdrawn the record may not file a brief or petition for rehearing until the record has been returned to the clerk's office from which it was withdrawn. Except as provided above, the record shall not be taken from a clerk's office without leave of this court on written motion. Failure of a party to return the record to the clerk may be treated as contempt of this court. When the party withdrawing the record is incarcerated, the clerk who has physical custody of the record on order of this court, will send the record to the warden of the institution with the request that the record be made available to the party under supervised conditions and be returned to the respective clerk before a specified date.

**FRAP 12. DOCKETING THE APPEAL; FILING OF THE RECORD**

(a) Docketing the Appeal. Upon receipt of the copy of the notice of appeal and of the docket entries, transmitted by the clerk of the district court pursuant to Rule 3(d), the clerk of the court of appeals shall thereupon enter the appeal upon the docket. An appeal shall be docketed under the title given to the action in the district court, with the appellant identified as such, but if such title does not contain the name of the appellant, the appellant's name, identified as appellant, shall be added to the title.

(b) Filing the Record, Partial Record, or Certificate. Upon receipt of the record transmitted pursuant to Rule 11(b), or the partial record transmitted pursuant to Rule 11(e), (f), or (g), or the clerk's certificate under Rule 11(c), the clerk of the court of appeals shall file it and shall immediately give notice to all parties of the date on which it was filed.

**(c) [Abrogated.]**

(Amended effective August 1, 1979; July 1, 1986.)

**Circuit Rule 12. Docketing the Appeal**

(a) Docketing. The clerk will notify counsel and parties acting pro se of the date the appeal is docketed.

(b) Caption. The parties on appeal shall be designated in the title of the cause in court as they appeared in the district court, with the addi-

**Attachment J:**

Eugene Wzorek v. City of Chicago et al,  
#84-CV-9978

“Plaintiff's Motion for Access to Tapes /  
Appeals Denied”,

contained herein as the following:

Item 1. Case Docket sheet, document 207, dated 23 July 1992,  
citing Judge Duff's denial as:

“Plaintiff's motion to produce the court reporter's electronic  
recording tapes is denied.” (1 page)

Item 2. Transcript of proceedings, #84-CV-9978,  
dated 23 July 1992 (in full, as 4 pages)

Item 3. USCOA Seventh Circuit case #95-3470,  
Eugene Wzorek, Petitioner v.  
City of Chicago et al, Respondent  
dated 03 July 1996  
(as relates to Judge Duff's earlier  
denial, dated 23 July 1992)

ORDER, in full (as 1 page),  
as “DENIED”

## UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS

|  |                    |  |               |
|--|--------------------|--|---------------|
| Name of Assigned Judge or Magistrate Judge | Brian Barnett Duff | Sitting Judge if Other Than Assigned Judge |               |
| Case Number                                | 84 C 9978          | Date                                       | July 23, 1992 |
| Case Title                                 | Wzorek vs City     |  |               |

[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd-party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

## DOCKET ENTRY:

|  |   |  |
|--|---|--|
| (1)  | <input type="checkbox"/>                    | Filed motion of [use listing in "MOTION" box above]  |
| (2)  | <input type="checkbox"/>                    | Brief in support of motion due _____   |
| (3)  | <input type="checkbox"/>                    | Answer brief to motion due _____ Reply to answer brief due _____   |
| (4)  | <input type="checkbox"/>                    | <input type="checkbox"/> Ruling on _____ set for _____ at _____  |
|  | <input type="checkbox"/>                    | <input type="checkbox"/> Hearing _____   |
| (5)  | <input type="checkbox"/>                    | Status hearing <input type="checkbox"/> held <input type="checkbox"/> continued to <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____   |
| (6)  | <input type="checkbox"/>                    | Pretrial conf. <input type="checkbox"/> held <input type="checkbox"/> continued to <input type="checkbox"/> set for <input type="checkbox"/> re-set for _____ at _____   |
| (7)  | <input type="checkbox"/>                    | Trial <input type="checkbox"/> Set for <input type="checkbox"/> re-set for _____ at _____  |
| (8)  | <input type="checkbox"/>                    | <input type="checkbox"/> Bench Trial <input type="checkbox"/> Jury Trial <input type="checkbox"/> Hearing held and continued to _____ at _____   |
| (9)  | <input type="checkbox"/>                    | This case is dismissed <input type="checkbox"/> without <input type="checkbox"/> with prejudice and without costs <input type="checkbox"/> by agreement <input type="checkbox"/> pursuant to<br><input type="checkbox"/> FRCP 4(j) (failure to serve) <input type="checkbox"/> General Rule 21 (want of prosecution) <input type="checkbox"/> FRCP 41(a)(1) <input type="checkbox"/> FRCP 41(a)(2) |
| (10)   | <input checked="" type="checkbox"/>         | [Other docket entry] Plaintiff's motion to produce the court reporter's electronic recording tapes is denied.  |
| (11)   | <input type="checkbox"/>                    | [For further detail see <input type="checkbox"/> order on the reverse of <input type="checkbox"/> order attached to the original minute order form.]   |
| <input type="checkbox"/>                     | No notices required, advised in open court. |  |
| <input type="checkbox"/>                     | No notices required.                        |  |
| <input type="checkbox"/>                     | Notices mailed by judge's staff.            |  |
| <input type="checkbox"/>                     | Notified counsel by telephone.              |  |
| <input type="checkbox"/>                     | Docketing to mail notices.                  |  |
| <input type="checkbox"/>                     | Mail AO 450 form.                           |  |
| <input type="checkbox"/>                     | Copy to judge/magistrate Judge.             |  |
| <input type="checkbox"/>                     | courtroom deputy's Initials                 |  |
| APPENDIX - C                                 |   |  |
| Date/time received in central Clerk's Office |   |  |
| JUL 27 1992                                  |   | number of notices  |
| JUL 27 1992                                  |   | date docketed  |
| JUL 27 1992                                  |   | docketing dpty. initials   |
| JUL 27 1992                                  |   | date mailed notice   |
| JUL 27 1992                                  |   | mailing dpty. initials   |
|  |   | Document # 207   |



IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

|                      |   |                   |
|----------------------|---|-------------------|
| EUGENE WZOREK,       | ) |                   |
|                      | ) |                   |
| Plaintiff,           | ) | No. 84 C 9978     |
|                      | ) |                   |
| v.                   | ) | Chicago, Illinois |
|                      | ) |                   |
| THE CITY OF CHICAGO, | ) | July 23, 1992     |
|                      | ) |                   |
| Defendant,           | ) | 9:30 a.m.         |

TRANSCRIPT OF PROCEEDINGS - MOTION  
BEFORE THE HONORABLE BRIAN BARNETT DUFF

APPEARANCES:

|                    |  |
|--------------------|--|
| For the Plaintiff: | MR. GORDON JAMES ARNETT<br>5865 North Lincoln Avenue, Suite 112<br>Chicago, Illinois 60659   |
| For the Defendant: | MR. TERENCE J. MORAN<br>Assistant Corporation Counsel<br>Labor Division<br>180 North LaSalle Street, Suite 1408<br>Chicago, Illinois 60601 |

MICHAEL P. SNYDER, CSR, RPR, CM  
Official Reporter  
United States District Court  
219 South Dearborn Street, Room 2128  
Chicago, Illinois 60604  
Telephone (312) 435-5563

APPENDIX C

1 THE CLERK: 84 C 9978, Eugene Wzorek versus the City  
2 of Chicago; motion for the tapes of the court reporter.

3 MR. ARNETT: Good morning, Your Honor. Gordon Arnett  
4 for the plaintiff.

5 MR. MORAN: Good morning, Judge. Terry Moran on  
6 behalf of the defendant.

7 THE COURT: Good morning. Now, Mr. Arnett, you have  
8 made a motion that I don't think that there is any basis in law  
9 for, and you have intimated that you wanted an in camera  
10 meeting or something because of something that might be less  
11 than could face the public eye. I don't like the inference,  
12 and so I have got another court reporter here this morning so  
13 that my court reporter can speak up if there is anything you  
14 would like to say.

15 Now, before you say anything let me tell you that the  
16 transcripts in this case were certified and sent to the federal  
17 court of appeals three, four years ago, and you have them, you  
18 can read them. There is no question that they are the  
19 transcripts. They have been verified by my court reporter,  
20 they have been used by both sides, they have been accepted as  
21 factual, and you have asked to refer to her tapes. Now, her  
22 tapes are only used so that she can verify her work. They are  
23 her personal property. You have no right to them, and she told  
24 you so.

25 Now, I don't know what this suggestion is that we

MICHAEL P. SNYDER, Official Reporter

1 should be careful because some television station is watching  
2 us. We are not worried about television stations, Mr. Arnett.

3 Now, what is it you would like to say?

4 MR. ARNETT: In view of your comments just now, Your  
5 Honor, I think the best approach would be for me to withdraw  
6 this motion and perhaps file one later on outlining in as much  
7 detail as I can compile.

8 THE COURT: Mr. Arnett, I am denying your motion to  
9 require me to give, to tell my court reporter to give you her  
10 personal property. It is denied. If you don't like it, I will  
11 let you appeal it.

12 MR. ARNETT: Very well. However, I may be unwise to  
13 say this, but I have obtained such tapes in other courts in  
14 this building as though it were a routine matter, and that is  
15 what I thought it was.

16 THE COURT: It is not a routine matter, Mr. Arnett.  
17 If I had to take every person's request for my court reporter's  
18 personal property, her tapes, which she uses only to be sure of  
19 her accuracy, and you know her skills with that machine, she  
20 does it only for her own benefit, she is paid for the machines,  
21 she is paid for the tapes, she uses them for her own use, and  
22 if you could get them, then everybody in the world could get  
23 them, and we would be playing them every night on Channel 7,  
24 Channel 5, on Channel 2, and Channel 9, and Channel 6 and  
25 Channel 32 whenever they wanted them. They are personal

MICHAEL P. SNYDER, Official Reporter

1 property, they are used as a tool just like a pencil, and I'm  
2 not going to make her give you her pencils. Okay?

3 MR. ARNETT: I didn't mean to --

4 THE COURT: Now, is there any other issue you want to  
5 bring before me today?

6 MR. ARNETT: No, Your Honor.

7 THE COURT: Okay, next case.

8 MR. MORAN: Thank you, Judge.

9 (Proceedings concluded.)

10 C E R T I F I C A T E

11

12 I, Michael P. Snyder, do hereby certify that the  
13 foregoing is a complete, true, and accurate transcript of the  
14 proceedings had in the above-entitled case before the Honorable  
15 BRIAN BARNETT DUFF, one of the judges of said Court, at  
16 Chicago, Illinois, on July 23, 1992.

17

18

19

20

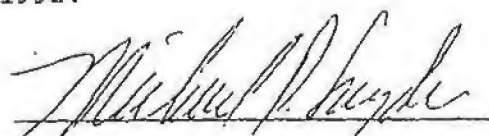
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Official Court Reporter

United States District Court

Northern District of Illinois

Eastern Division

MICHAEL P. SNYDER, Official Reporter

# United States Court of Appeals

For the Seventh Circuit

Chicago, Illinois 60604

July 3, 1996

Before

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. KENNETH F. RIPPLE, Circuit Judge

EUGENE WZOREK,

Petitioner-Appellant,

No. 95-3470

vs.

CITY OF CHICAGO, an Illinois Municipal  
Corporation,

Respondent-Appellee.

} Appeal from the United States  
District Court for the Northern  
District of Illinois, Eastern  
Division.

} No. 84 C 9978

} Brian Barnett Duff, Judge.

## ORDER

On consideration of the petition for rehearing filed by petitioner-appellant on June 6, 1996, all of the judges on the panel have voted to deny a rehearing. Accordingly,

IT IS HEREBY ORDERED that the aforesaid petition for rehearing be, and the same is hereby, DENIED.

APPENDIX D

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**Attachment K:**

Mr. George Schuch, records request and search on behalf of Mr. Eugene Wzorek, Petitioner and Plaintiff herein, as regards

Eugene Wzorek v. City of Chicago et al,  
USCOA Seventh Circuit cases # 89-1868 / #89-2988,  
contained herein as the following:

Item 1. Notarized Affidavit of George M. Schuch, dated 13 June 2018, citing lack of any court record in the form of audio recording tape/s, via in-person inspection of archive on 04 June 2018 (as 3 pages).

Item 2. Photographs of USPS Mail Certified Return Receipt delivery, as signed and dated accordingly (as 1 page, 2 return documents)

Item 3. The following images, in order (3 total pages):

K image 01 – physical archive box, w/markings and records request

K image 02 – Decision, USCOA 7<sup>th</sup> Circuit case #89-1868 / #89-2988

K image 03 – pink copy, original Record Withdrawal Slip (see Rosenthal)

and FOR REFERENCE,  
908 F.2d 1180,

USCOA Seventh Circuit, Decision, # 89-1868 / #89-2988,

Argued 11 May 1990, Decided 13 July 1990

as published, for which court audio tape recordings have been sought, regarding Appellant's (City of Chicago et al) testimony in oral argument.

(As 9 pages)

It shall be noted HEREIN AND ELSEWHERE  
that this decision was made by USCOA Seventh Circuit Justices  
while the tape in evidence of this official court proceeding was  
missing from court record (see signed and dated Record Withdrawal Slip,  
K image 03 directly above). The tape remains absent  
from Court record unto this day.

## AFFIDAVIT

On Monday, June 4, 2018, I went to the National Archives building located at 7358 South Pulaski Road in Chicago, Illinois, 60629, in order to obtain copies of court records.

Those records pertain in general to the Northern District E.D. Ill. / Seventh Circuit appellate court case of Eugene Wzorek vs. City of Chicago et al, # 84-CV-9978.

In specific, the records requested pertained to an appeal on the above case, heard in Seventh Circuit, which is further identified as 906-F2D-1180, case numbers 89-1868 and 89-2988, which was argued on May 11, 1990 and decided on July 13, 1990.

During this visit, it was relayed to me by personnel working at that office that the official court audio recordings (tapes) were neither present, nor on file for Seventh Circuit case numbers 89-1868, nor 89-2988, and thus WERE NOT AVAILABLE TO ME EITHER FOR PURCHASE OR REVIEW.

While in no way reflecting on the part of any employees at the National archives, I am hereby citing violation of Rule 11E, regarding missing court audio recordings pertaining to the hearing/s of Seventh Circuit Appellate cases 89-1868 and 89-2988, which constitutes "missing evidence" from the official record of the case and hearings, as recorded and specified in Illinois Code of Civil Procedure and Rules of Court, Smith-Hurd Annotated Statutes, Federal Court Rules, U.S. Court of Appeals for the Seventh Circuit, U.S. District Courts of Illinois, Chapters 110 (Practice) and 110A (Practice Rules); and further, I am citing that said audio tape recording has been missing from the official record since on or about 26 June 1990, in defiance of the aforementioned and applicable Rule 11E, custody of which was taken by then Assistant US Attorney Lawrence Rosenthal, as per Rosenthal's signature obtained on the Seventh Circuit Court of Appeals record Withdrawal Slip (see attachment), thereon dated 26 June 1990.

I hereby certify and attest to all of the above, and do affix my hand hereto.

George M. Schuch, Jr.

George M. Schuch, Jr.

Address:

3741 W 61st Place  
Chicago, IL 60629

6-15-2018  
date

In Witness Hereof:

Maria C. Tapia  
name, office Notary

6-13-2018  
date

8-18-2018  
commission





RECORD WITHDRAWAL SLIP

UNITED STATES COURT OF APPEALS  
for the Seventh Circuit  
Chicago, Illinois 60604

ON AIMS

JUL 18 1990

No. 89-1868

2988

Uzorek

City of Chicago

Tape Missing  
removed from the Clerk

copies of the

Tape was removed in original

counsel for

ing

cripta

itions

bila

r (Specify)

J. Michael

5818

(Phone Number)

26 July 1990

(Date)

Please sign and return to the Clerk of the United States Court of Appeals for the Seventh Circuit,  
Chicago, Illinois.

Pursuant to Circuit Rule 13(a), no brief will be filed on behalf of an attorney or party if all parts of the record  
previously withdrawn are not returned to the Clerk's Office.

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to: GINO J. AGNELLO, Clerk  
UNITED STATES COURT OF APPEALS  
FOR THE SEVENTH CIRCUIT  
EVERETT MCKINLEY DIRKSEN  
UNITED STATES COURT HOUSE  
219 S. DEARBORN, RM 2722  
CHICAGO, IL 60604



9590 9402 3204 7166 5612 56

2. Article Number (Transfer from service label)

7008 0500 0000 7340 9669

PS Form 3811, July 2015 PSN 7530-02-000-9053

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

6/15/15

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

## SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

NATIONAL ARCHIVES at Chicago  
7358 South PULASKI ROAD  
CHICAGO, IL 60629-5898



9590 9402 3204 7166 5612 63

2. Article Number (Transfer from service label)

7008 0500 0000 7340 9676

PS Form 3811, July 2015 PSN 7530-02-000-9053

## COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ YesIf YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature☐ Adult Signature Restricted Delivery☐ Certified Mail®☐ Certified Mail Restricted Delivery☐ Collect on Delivery☐ Collect on Delivery Restricted Delivery☐ Priority Mail Express®☐ Registered Mail™☐ Registered Mail Restricted Delivery☐ Return Receipt for Merchandise☐ Signature Confirmation™☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

000160

| REFERENCE SERVICE SLIP  |                              |   |                              |                              | DATE  | REF   |
|---|------------------------------|---|------------------------------|------------------------------|---|-------|
| NAME OF REQUESTOR<br>S. L. G. G. G.                             |                              |   |                              |                              | 6418  | KM CH |
| ADDRESS OR ADDRESS<br>P.O. CH 18022                             |                              |   |                              |                              |   |       |
| UNITS OF SERVICE  |                              |   |                              |                              | SOURCE OF REQUEST (Check)   |       |
| INFORMATION SERVICE<br>(Number of copies)                       | RECORDS<br>(Number of items) | TERMINAL, FILE<br>ENCLOSURES, ETC.<br>(Number of items) | RECORDS<br>(Number of items) | RECORDS<br>(Number of items) | <input type="checkbox"/> NA Administrative Use<br><input type="checkbox"/> Agency of Origin<br><input type="checkbox"/> Other Government<br><input checked="" type="checkbox"/> Nongovernment |       |
| WRITTEN   | TIME                         |   |                              |                              | REQUEST HANDLED BY<br>SR  |       |
| RECORD  | STACK AREA                   | RECORD  | COMPARTMENT                  | DATE                         | DISCARDING  |       |
| RECORD IDENTIFICATION<br>7th Circuit<br>18022<br>18022<br>18022 |                              |   |                              |                              | 276 91 0020<br>Box 134  |       |
| RECEIVED BY   | DATE                         | RECEIVED BY   | DATE                         |                              |   |       |

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

DO NOT REMOVE FROM RECORDS

OPTIONAL FORM NO. 10 (Rev. 1-6-60)

276 91 0020

134

RG 0276 U.S. Courts of Appeals  
Chicago, IL  
7th Circuit Court of Appeals  
Case Files  
1861 - 1963  
NAD 725-04  
C276-01-0070-0311

ALC 1-3413076

CONTAINER # 154

Attachment K image 01

**United States Court of Appeals**

For the Seventh Circuit  
Chicago, Illinois 60604

JUDGMENT - WITH ORAL ARGUMENT

Date: July 13, 1990

BEFORE:           Honorable Walter J. Cummings, Circuit Judge  
                  Honorable Frank H. Easterbrook, Circuit Judge  
                  Honorable Kenneth F. Ripple, Circuit Judge

No. 89-1868, 89-2988

EUGENE WZOREK,  
                  Plaintiff - Appellee

v.

CITY OF CHICAGO, a Municipal Corporation,  
                  Defendant - Appellant

Appeal from the United States District Court for the  
Northern District of Illinois, Eastern Division  
No. 84 C 9978, Judge Brian Barnett Duff

This cause was heard on the record from the above mentioned  
district court, and was argued by counsel.

On consideration whereof, IT IS ORDERED AND ADJUDGED by this  
Court that the order of the District Court requiring the City to pay  
\$150,000 worth of petitioner's psychiatric bills is REVERSED; in all  
other respects, the April and September 1989 orders are AFFIRMED,  
with costs, in accordance with the opinion of this Court filed this  
date.

**Attachment K image 02**

000162

# Attachment K image 03

**RECORD WITHDRAWAL SLIP**

**UNITED STATES COURT OF APPEALS**  
for the Seventh Circuit  
Chicago, Illinois 60604

No. 77-161

**ON AIMS**  
JUL 18 1997

Received from the Clerk \_\_\_\_\_ copies of the \_\_\_\_\_

as Granted for \_\_\_\_\_

Findings 2

Transcripts 3

Depositions \_\_\_\_\_

Exhibits \_\_\_\_\_

Other (Specify) 4/10/97

Please sign and return to the Clerk of the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois.

(NOTE: Payment to Clerk shall not be made until the Clerk is notified by the Clerk of the Court.)

---

**RECORD WITHDRAWAL SLIP**

**UNITED STATES COURT OF APPEALS**  
for the Seventh Circuit  
Chicago, Illinois 60604

No. 77-161

**ON AIMS**  
JUL 18 1997

Received from the Clerk \_\_\_\_\_ copies of the \_\_\_\_\_

as Granted for \_\_\_\_\_

Findings \_\_\_\_\_

Transcripts \_\_\_\_\_

Depositions \_\_\_\_\_

Exhibits \_\_\_\_\_

Other (Specify) 4/10/97

Please sign and return to the Clerk of the United States Court of Appeals for the Seventh Circuit, Chicago, Illinois.

(NOTE: Payment to Clerk shall not be made until the Clerk is notified by the Clerk of the Court.)

United States Court of Appeals,

Seventh Circuit.

Eugene WZOREK, Petitioner–Appellee,

v.

CITY OF CHICAGO, a Municipal Corporation, Respondent–Appellant.

Nos. 89–1868, 89–2988.

Argued May 11, 1990. Decided July 13, 1990.

Terminated employee sued city. The United States District Court for the Northern District of Illinois, Eastern Division, Brian Barnett Duff, J., held the city in civil contempt, finding that the employee's discharge violated a decree seeking to limit the effects of political patronage in the treatment of city employees. Following orders awarding relief to employee, 708 F.Supp. 954 and 718 F.Supp. 1386. city appealed. The Court of Appeals, Cummings, Circuit Judge, held that: (1) city could be held liable for the impermissible political motivations of its “middle managers,” and (2) employee was not entitled to recover damages for medical expenses and mental distress.

Affirmed in part, and reversed in part.

## **West Headnotes (3)Collapse West Headnotes**

[Change View](#)

[1Contempt](#)

[Persons liable](#)

Under decree seeking to limit effects of political patronage in treatment of Chicago employees, city could be held liable, in civil contempt action, for impermissible political motivations of its “middle managers” which violated terms of decree, even assuming its top supervisors were unaware of motivations.

[3 Cases that cite this headnote](#)



[93Contempt](#)

[93Acts or Conduct Constituting Contempt of Court](#)

[93k29Persons liable](#)

[2Interest](#)



## Labor relations and employment

### Municipal Corporations



#### Compensation after discharge, suspension, or retirement

Discharge of City truck driver for involvement in municipal partisan politics violated consent decree and required the City to pay him back pay, prejudgment interest, and medical prescription expenses.

#### 3 Cases that cite this headnote



#### 219Interest

##### 219III Time and Computation

##### 219k39 Time from Which Interest Runs in General

##### 219k39(2.5) Prejudgment Interest in General

##### 219k39(2.40) Labor relations and employment



#### 268Municipal Corporations

##### 268V Officers, Agents, and Employees

##### 268V(C) Agents and Employees

##### 268k220 Compensation

##### 268k220(6) Compensation after discharge, suspension, or retirement

### 3Courts



#### Previous Decisions in Same Case as Law of the Case

Doctrine of law of case prevents reconsideration of decision barring unusual circumstances or compelling reason.

#### 8 Cases that cite this headnote



#### 106Courts

##### 106II Establishment, Organization, and Procedure

##### 106II(G) Rules of Decision

##### 106k99 Previous Decisions in Same Case as Law of the Case

##### 106k99(1) In general

(Formerly 228k99(1))

## **Attorneys and Law Firms**

\*1180 John L. Gubbins, Linda Friedman, Gubbins & Associates, Mark LeFevour, Chicago, Ill., and Terrance Mitchell, Homewood, Ill., for plaintiff-appellee.  
Lawrence Rosenthal, Asst. U.S. Atty., Arthur N. Christie, Mary L. Smith, James D. Montgomery, Corp. Counsel, Kelly R. Welsh, Asst. Corp. Counsel, and Ruth M. Moscovitch, Asst. Corp. Counsel, Appeals Div., Jonathan P. Siner, Mardell Nereim, Office of the Corp. Counsel, and Donald Hubert, Chicago, Ill., for defendant-appellant.  
Before CUMMINGS, EASTERBROOK and RIPPLE, Circuit Judges.

## Opinion

CUMMINGS, Circuit Judge.

The City of Chicago (the "City") appeals from two orders of the district court involving a finding of civil contempt against the City under the so-called *Shakman* decree, which seeks to limit the effects of political patronage in the treatment of City employees. See *Shakman v. Democratic Org. of Cook County*, 481 F.Supp. 1315, 1356–1359 (N.D.Ill.1979), reversed in part *sub nom. Shakman v. Dunne*, 829 F.2d 1387 (7th Cir.1987), certiorari denied, 484 U.S. 1065, 108 S.Ct. 1026, 98 L.Ed.2d 991.

The first order (appealed in our case No. 89–1868) is dated April 27, 1989. It requires the City to pay petitioner Eugene Wzorek \$145,160.68 in back pay, prejudgment interest, and medical and prescription expenses as compensation for terminating Wzorek as a City truck driver because of his involvement in municipal partisan politics. The second order under appeal (our No. 89–2988) is dated September 6, 1989. \*1181 In it, the court: (1) denied petitioner's reinstatement to his city job on the ground that he was still emotionally incapable of returning to work; (2) increased the amount of back pay by \$14,500, plus \$362.50 prejudgment interest; (3) added front pay for one year (with a present value of \$33,518.17) in lieu of reinstatement; and (4) ordered the City to provide for petitioner's psychiatric treatment for two years at a cost not to exceed \$150,000. See *Wzorek v. City of Chicago*, 708 F.Supp. 954 (N.D.Ill.1989).

The City argues that the petitioner failed to prove that those City officials with authority to terminate him acted for political reasons and also that the award for psychiatric care was in error. The relief ordered by the district court in its April 27, 1989, order, as supplemented in its September 6, 1989, order, is affirmed except with respect to payment for Wzorek's psychiatric treatment for the next two years. *Wzorek v. City of Chicago*, 718 F.Supp. 1386 (N.D.Ill.1989).

I.

A.

In the main, the City does not attempt to meet the heavy burden under Fed.R.Civ.Proc. 52(a) of proving that the district court's factual findings were clearly erroneous. Instead, the City primarily argues that, even under the facts found by the district court, the City cannot be held liable for the



impermissible political motivations of its "middle managers" which violate the terms of the *Shakman* decree if its top supervisors were unaware of those motivations.

Petitioner Wzorek, now 45, was employed by the City of Chicago's Department of Sewers as a probationary truck driver. During his city employment, Wzorek was a resident of the 12th Ward on Chicago's southwest side, where he supported the campaign of the present Mayor Richard M. Daley, financially and otherwise, in Daley's unsuccessful 1983 mayoral primary campaign. Harold Washington won the primary election.

While a probationary employee, Wzorek received an estimable 85 out of 100 performance rating. During the crucial period of Wzorek's employment, Eugene Barnes was the City's Acting Commissioner of the Department of Sewers. William Sommerford, the General Superintendent of the Cleaning Division for the Department of Sewers, and Ned Madia, a foreman of the Cleaning Division, were supervisors of Wzorek. Sommerford and Madia were hostile to the Daley 1983 mayoral primary campaign. After discovering that the petitioner had contributed money to the Daley campaign, Sommerford told the petitioner not to contribute again because he could get into trouble later down the line, and that Wzorek better hope the right candidate was going to win the primary. Petitioner was required to remove his Daley button and bumper stickers while others were permitted to wear their rival Jane Byrne and Harold Washington buttons. Sommerford also told Wzorek to pay his dues to the 12th Ward Regular Democratic Organization and that the restrictions of the *Shakman* decree could be avoided. Madia criticized Richard M. Daley and stated that Wzorek "better shape up" and pay 12th Ward dues.

When Eugene Barnes became Acting Commissioner of the Department of Sewers under Mayor Washington he told his supervisors that he was not going to make the 800 employees of that department into discharge-proof career service personnel. Barnes noted that the 27th Ward had supported Jane Byrne in the primary election. Under Barnes, 57 Department of Sewers probationary employees were discharged, including 29 from the 27th Ward. Barnes also allowed the petitioner to be fired as an unsatisfactory employee upon the recommendation of Sommerford. Although Sommerford later testified that petitioner was a good employee, on June 29, 1984, Barnes wrote to Dr. Charles Pounian, Commissioner of Personnel, that Barnes intended to discharge petitioner for poor work performance, the excuse also given by Sommerford. Consequently, on July 6, Pounian wrote petitioner that he had been discharged for that reason.

\*1182 The district judge found that Wzorek's political activities were a motivating factor in his discharge. He noted that petitioner's three supervisors wanted to discharge petitioner for his unsympathetic political activities and therefore had recommended that Barnes fire him.

**B.**

A bench trial on liability was held during four days in June and July 1988 and the damages issue was heard in November 1988. On March 21, 1989, the district court awarded the petitioner damages in

the amount of \$145,160.68. Wzorek v. City of Chicago, 708 F.Supp. 954 (N.D.Ill.1989) (back pay of \$132,825.33, plus prejudgment interest of \$13,833.35 and \$4,620 in medical expenses and prescriptions; offset by \$6,118 in unemployment compensation payments made by the State of Illinois to the petitioner and refunded to the State by the City). However, the court reserved ruling on whether the petitioner should be reinstated to his job in the future and did not specify the dollar amount of the "front pay and benefits" that might be awarded if reinstatement was not appropriate. The court stated that it would treat Wzorek's request for reinstatement in supplemental proceedings "within a reasonable time after November 1, 1989." Id. at 961. The City did not appeal from the March 21 judgment. On April 27, 1989, the district judge directed the City to pay the March 21 judgment by May 1, 1989. This time the City did appeal.

The City filed an emergency motion to stay the April 27 order. The petitioner asserted that this Court lacked jurisdiction to consider the appeal, contending that the March 21, 1989, judgment was final and that the time in which to file an appeal from that judgment had run. This Court subsequently decided that the March 21, 1989, order was not final and that this Court has jurisdiction to review the April 27, 1989, non-final order under the collateral-order doctrine of Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546–547, 69 S.Ct. 1221, 1225–1226, 93 L.Ed. 1528; Palmer v. City of Chicago, 806 F.2d 1316, 1318–1320 (7th Cir.1987), certiorari denied, 481 U.S. 1049, 107 S.Ct. 2180, 95 L.Ed.2d 836. We adhere to that ruling.

In July 1989, the petitioner requested a hearing on his possible reinstatement to his City job. A hearing was held on that subject on August 16. On September 6, 1989, the district court issued the findings and conclusions of law supporting the order described above. Wzorek v. City of Chicago, 718 F.Supp. 1386 (N.D.Ill.1989).

### C.

Debate will undoubtedly continue regarding the wisdom of judicial restrictions on patronage. Compare R.F. Nagle, Constitutional Cultures: The Mentality and Consequences of Judicial Review 10, 37 & n. 71 (1989) with Laycock, "Notes on the Role of Judicial Review, the Expansion of Federal Power, and the Structure of Constitutional Rights," 99 Yale L.J. 1711, 1722–1724 (1990). Yet a majority of the Supreme Court has reaffirmed the vitality of the Court's line of cases holding that judicial restrictions may be placed upon "spoils systems" that violate the First Amendment. Rutan v. Republican Party of Illinois, 497 U.S. 62, 110 S.Ct. 2729, 111 L.Ed.2d 52 (1990).

In any case, the City asserts that it does not take issue with the anti-patronage case law and that it now respects the *Shakman* decree. Nor does the City argue that political affiliation could be considered relevant in any way to the petitioner's City job. See *Rutan*, 110 S.Ct. at — n. 5 (Stevens, J., concurring). The City argues instead that it cannot be held vicariously liable for the actions of maverick middle managers taking politically motivated actions on their own because it

never consented to assume such liability. To understand that claim a brief overview of the history of the extensive *Shakman* litigation is necessary.

In 1969, an independent candidate running as a delegate to the Illinois Constitutional Convention and one of his supporters filed a class action suit under 42 U.S.C. §§ 1983, 1985, 1986, and 1988 against various public and private bodies, including the City and its Mayor, alleging deprivations of \*1183 freedom of speech and association, and violations of due process and equal protection of the law. *Shakman v. Democratic Org. of Cook Co.*, 310 F.Supp. 1398 (N.D.Ill.1969). The plaintiffs alleged that the local Democratic Party, working in conjunction with patronage schemes in place within the City and Cook County (the “County”) governments, had used governmental power and public funds to create a system of rewards and punishments that effectively stifled speech, freedom of association, and independent political activity on the part of City and County employees. The plaintiffs alleged that this patronage system violated constitutional and other rights of political candidates, voters, taxpayers, and city workers. The district court dismissed the suit, ruling in part that the plaintiffs lacked standing to allege the harm done to patronage employees. *Id.* at 1402. This Court reversed upon reasoning not directly relevant to these appeals and remanded the case for further proceedings. *Shakman v. Democratic Org. of Cook Co.*, 435 F.2d 267 (1970). After the Supreme Court denied certiorari, 402 U.S. 909, 91 S.Ct. 1383, 28 L.Ed.2d 650, the plaintiffs entered into a consent decree with the defendants in 1971, the text of which may be found in *Shakman v. Democratic Org. of Cook Co.*, 481 F.Supp. 1315, 1356–1359 (N.D.Ill.1979). On May 5, 1972, the district court approved the consent decree as a settlement under Rule 23(e) of the Federal Rules of Civil Procedure. The decree established municipal liability through various provisions, including one which enjoins the City “from directly or indirectly, in whole or in part: (1) conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee, upon or because of any political reason or factor.” 481 F.Supp. at 1358 (¶ E). The decree is binding upon “the present and future officers, members, agents, servants, employees and attorneys of” the City. *Id.* at 1358 (¶ C(44)). In 1976, this Court affirmed a finding of civil contempt against the City and the City’s then Director of Administration of the Department of Streets and Sanitation, Michael Cardilli, for violating ¶ E of the decree quoted above by requiring city employees to circulate petitions for the candidacy of then Mayor Richard J. Daley. *Shakman v. Democratic Org. of Cook Co.*, 533 F.2d 344 (hereinafter *Cardilli* ), certiorari denied, 429 U.S. 858, 97 S.Ct. 156, 50 L.Ed.2d 135. On the issue most relevant to these consolidated appeals, the City argued that it could not be held in contempt “because Cardilli’s [politically motivated] conduct was clearly outside the scope of his employment.” *Id.* at 352. The Court disagreed, holding that Cardilli’s actions were within the scope of his employment. Therefore the plaintiffs were not required to show that supervisory employees were authorized to undertake political functions on the job. *Id.* at 352–353.

## II.

### A.

<sup>1</sup> Here clear and convincing evidence shows that the reason for Wzorek's discharge was that he was a Richard M. Daley loyalist rather than a supporter of then Mayor Byrne or future Mayor Washington. His failure to pay his 12th Ward dues was another factor held against him. The district court was not clearly erroneous in finding that the supposedly poor work record compiled by Wzorek was a pretext for his firing.

In rejecting the City's argument that it should not be held liable for the actions of lower-level supervisors, the district court cited Oxman v. WLS-TV, 846 F.2d 448 (7th Cir.1988). That case involved a claim under the federal Age Discrimination in Employment Act, 29 U.S.C. §§ 621 *et seq.*, in which the defendant employer claimed that the wrongful termination of the plaintiff based upon his age could not be imputed to the supervisor who actually made the decision to fire the plaintiff. This Court held that it was "reasonable," based on the facts in the record of that case, to infer that the improper reasons found to have motivated a lower-level supervisor in recommending termination of the plaintiff \*1184 were shared by the supervisor who actually terminated the plaintiff. *Id.* at 456–457. This holding in *Oxman* is not an application of respondeat superior principles. Instead it is a rule governing permissible inferences in allegedly pretextual terminations for illegitimate reasons. Such an inference is not available in this case. The district court specifically found that Barnes was "misinformed" as to the true grounds for Wzorek's termination, Wzorek, 708 F.Supp. at 959–960, and the petitioner has not shown that the court's finding was clearly erroneous.

Nevertheless the City's argument that it is not liable for its agents' breaches of the *Shakman* decree is foreclosed by the holding discussed above. Cardilli, 533 F.2d at 352–353. The Court not only called the contrary argument "patently frivolous," but it put the City on notice that it was under an obligation to police its employees, lest the door be opened " 'for wholesale disobedience of the Court.' " *Id.* at 353 n. 13 (quoting Singer Mfg. Co. v. Sun Vacuum Stores, Inc., 192 F.Supp. 738, 741 (D.N.J.1961)). Penalties for civil contempt here are intended to coerce the City's managers and supervisors into taking the concrete steps necessary to prevent all of those with supervisory responsibilities from violating the decree. Blind faith in middle managers will not do.

There is no doctrine of respondeat superior under 42 U.S.C § 1983. Riordan v. Kempiners, 831 F.2d 690, 695 (7th Cir.1987). That is irrelevant, however, because this is a civil contempt action based upon a consent decree entered into well in advance of Monell v. New York City Dept. of Social Servs., 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611, which gave birth to municipal liability under the civil rights statutes. At the time the City settled the *Shakman* case with the consent decree, municipalities could not be held liable at all as "persons" for purposes of § 1983. Monroe v. Pape, 365 U.S. 167, 187–192, 81 S.Ct. 473, 484–487, 5 L.Ed.2d 492. Therefore the only conceivable function of having the City bind itself was to be answerable for the deeds of its employees. There is

no reason to think that the City divined the compromise that was to come years later in *Monell*: cities become “persons,” but are not vicariously liable.

Counsel for the City stated at oral argument in this appeal that the City made “an improvident concession” in 1976 in arguing the *Cardilli* case before this Court by admitting to respondeat superior liability. It is far more likely that the City, under intense pressure to resolve the *Shakman* litigation, made large concessions in 1971 that a new generation of City managers now wishes to take back. Nowhere in the *Shakman* decree is the City shielded from the acts of so-called “middle managers,” an ill-defined group of supervisory workers who are outside the reach of the decree. The voluminous jurisprudential record of the *Shakman* litigation suggests instead that the extent of City liability has always been considered vast. See, e.g., *Shakman v. Democratic Org. of Cook Co.*, 569 F.Supp. 177, 184 (N.D.Ill.1983) (detailed implementation decree enforcing prohibition on patronage hiring) (judgment “applies to [City's and Mayor's] successors in office, to all of their agents and employees and to all others who receive notice of the Judgment and who are in active concert or participation with any of such persons.”).

The consent decree binds the City to liability under respondeat superior analysis. In this case there can be no argument that the supervisors who had the petitioner fired for his political activity acted outside the scope of their employment. The City's managers must assume responsibility for the politically motivated actions of employees which violate the decree. That may not be a simple task within a municipal government of 40,000 employees, but it is a task the City assumed by consenting to the decree.

**B.**

2 The case law fully supports an award of damages for a violation of the decree. *Hutto v. Finney*, 437 U.S. 678, 691, 98 S.Ct. 2565, 2573–2574, 57 L.Ed.2d 522 (civil contempt may be punished by a remedial fine, compensating party who won \*1185 injunction for the effects of noncompliance); *Connolly v. J.T. Ventures*, 851 F.2d 930, 933 (7th Cir.1988) (courts have broad discretion to fashion remedies tailored to harm while considering likely effects of alternative remedies). The City's only complaint involves the award for psychiatric damages. In compelling the City to pay up to \$150,000 for Wzorek's psychiatric treatment for the next two years, the district court reasoned that Wzorek's discharge triggered Wzorek's mental illness and made him unfit to obtain employment.

3 Before this case was assigned to Judge Duff, predecessor Judge Decker had stricken that part of Wzorek's petition requesting damages for medical expenses and mental distress. The doctrine of the law of the case prevents reconsideration of that decision barring “unusual circumstances or a compelling reason.” *Parts and Electric Motors, Inc. v. Sterling Electric, Inc.*, 866 F.2d 228, 231 (7th Cir.1988), certiorari denied, 493 U.S. 847, 110 S.Ct. 141, 107 L.Ed.2d 100. There has been no showing that would make this doctrine inapplicable.

Law of the case does not prevent a reviewing court from examining the earlier decision. Cohen v. Bucci, 905 F.2d 1111, 1112 (7th Cir.1990). Numerous factors support Judge Decker's decision. First, Judge Duff in his September 1989 conclusions of law found that "it is not clear to what degree Wzorek's present [mental] condition is the result of the City's original violation." Wzorek, 718 F.Supp. at 1388. Second, the district court based the \$150,000 award for psychiatric care upon: (1) the petitioner's lack of resources and failure to seek public assistance or insurance coverage; and (2) the City's failure to pay the March 1989 order awarding Wzorek \$145,160.68 promptly instead of appealing therefrom. *Id.* However, this Court had stayed that order and the City's exercise of its right to appeal cannot be the basis for awarding Wzorek his psychiatric expenses for the ensuing two years. Since the City's conduct was never alleged to be deliberate and malicious, recovery for mental distress was not warranted. Thompson v. Johnson, 410 F.Supp. 633, 643 (E.D.Pa.1976), affirmed without published opinion, 556 F.2d 568 (3d Cir.1977). Third, the medical records show that Wzorek's physician did not even refer Wzorek to a psychiatrist until more than a year after discharge, thus weakening any inference that his condition was caused by the discharge, nor has he sought psychiatric care even though such care is obtainable without ability to pay. All of these reasons support Judge Decker's grant of the City's motion to strike this request for recovery.

III.

The order requiring the City to pay \$150,000 worth of petitioner's psychiatric bills is reversed. In all other respects, the April and September 1989 orders are affirmed.

## All Citations

906 F.2d 1180

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**Attachment L:**

117 S.Ct. 710  
Supreme Court of the United States

Eugene Wzorek, Petitioner

v.

City of Chicago

Case # 96-6803  
Dated 06 January 1997

Presented as OPINION (1 page).

Supreme Court of the United States

Eugene WZOREK, petitioner,

v.

CITY OF CHICAGO.

No. 96-6803.

Jan. 6, 1997.

Case below, 708 F.Supp. 954; 718 F.Supp. 1386; 906 F.2d 1180; 86 F.3d 1158.

## Opinion

Petition for writ of certiorari to the United States Court of Appeals for the Seventh Circuit denied.

## All Citations

519 U.S. 1067, 117 S.Ct. 710 (Mem), 136 L.Ed.2d 630, 65 USLW 3466

**End of Document**

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**Attachment M:**

1987 WL 19801

Eugene Wzorek, Petitioner

v.

City of Chicago, Respondent

Case # 84-CV-9978

Dated 05 November 1987

Memorandum opinion and order,

Judge Bernard Martin Decker

(as 4 pages)

Only the Westlaw citation is currently available.

United States District Court, N.D. Illinois, Eastern Division.

Eugene WZOREK, Petitioner,

v.

CITY OF CHICAGO, Respondent.

No. 84 C 9978.

Nov. 5, 1987.

**MEMORANDUM OPINION AND ORDER**

DECKER, Senior District Judge.

\*1 Petitioner Eugene Wzorek ("Wzorek"), fired from his job with respondent, the City of Chicago ("the City"), seeks a rule to show cause why the City should not be held in contempt of the *Shakman* Decree, which, *inter alia* permanently enjoined the City from discharging an employee for political reasons. The City now moves for summary judgment on the alternate grounds that (1) politics did not influence Wzorek's discharge, or (2) even if politics played a role, it is immaterial because Wzorek would have been fired anyway.

*I. Factual Background*

Wzorek went to work for the City's Department of Streets and Sanitation as a truck driver in July, 1973, and in March, 1977 he transferred to the Department of Sewers. Prior to 1984 Wzorek held a non-career service status called Departmental Employment Service. In December, 1983, the Chicago City Council passed an ordinance that granted Wzorek and other similarly situated employees career service status upon completion of a probationary period lasting from January 1, 1984 to June 30, 1984. On June 29, 1984, Wzorek was fired, allegedly for poor job performance, by Eugene Barnes ("Barnes"), Acting Commissioner of the Department of Sewers.

Up until April, 1983, Wzorek resided in the City's 12th Ward and participated actively in the ward's Regular Democratic Organization ("Organization"). Wzorek supported the late Mayor Richard J. Daley, and, in 1982, contributed \$1,000 to the mayoral campaign of Daley's son, Richard M. Daley. In April, 1983, Wzorek's residence was destroyed by fire, and he relocated outside of the 12th Ward. Subsequently, Wzorek discontinued his contributions to the 12th Ward Organization.

Barnes became the Acting Commissioner of the City's Department of Sewers on October 3, 1983. He publicized his intention to deny career service status to those probationary employees having more than ten absences without pay during the probationary period, and those with a history of poor work performance. The City alleges that, during the probationary period, Wzorek was absent without pay for a total of 7 ¾ days. With respect to his work record, in July, 1981 Wzorek received a written reprimand for his failure to wear a safety helmet. Also, in June, 1982 Wzorek was docked for fourteen hours for failure to follow orders.

## II. Discussion

Summary judgment is appropriate if the parties' submissions demonstrate that there is no *genuine* issue of *material* fact and the moving party is entitled to judgment as a matter of law. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 106 S.Ct. 2505, 2510 (1986). The moving party will be entitled to judgment as a matter of law if the non-moving party fails to make a sufficient showing on an essential element of his case with respect to which he has the burden of proof. Celotex v. Catrett, 477 U.S. 317, 106 S.Ct. 2548, 2553 (1986).

The so-called *Shakman* Decree, a 1972 consent decree entered in *Shakman v. Democratic Organization of Cook County*, No. 69 C 2145 (N.D.Ill. May 5, 1972), reprinted at 481 F.Supp. 1315, 1356 App. (N.D.Ill.1979), *inter alia*, permanently enjoined the City and its agent-employees from: \*2 conditioning, basing or knowingly prejudicing or affecting any term or aspect of governmental employment, with respect to one who is at the time already a governmental employee upon or because of any political reason or factor.

With respect to the instant petition, the City contends that politics was not a substantial factor in Wzorek's discharge, and, in the alternative, that any political motivation is immaterial because Wzorek would have been fired regardless.

Admittedly, the theory behind Wzorek's petition is ambiguous. As far as the court can determine at this point, Wzorek is arguing that he was fired either because of his support for the 12th Ward Organization, or because he discontinued this support, or both. Nevertheless, Wzorek in turn has alluded to sufficient ambiguity in the City's motivation for firing him so as to raise genuine issues of material fact.

First, Wzorek has produced evidence to challenge the City's primary contention, that politics played no part in Wzorek's discharge. John Lucille ("Lucille"), who was a foreman in the Department of Sewers and Wzorek's supervisor during part of his probationary period, testified about a meeting

called by Barnes in January, 1984. See Affidavit of Lucille ("Lucille Aff."). According to Lucille, Barnes stated emphatically that he was not going to allow all probationary employees to achieve career service status. *Id.* at ¶ 5. Lucille inferred that Barnes wanted to retrieve these jobs for Mayor Harold Washington. See Lucille Aff. at ¶¶ 6–7. If Barnes fired Wzorek pursuant to Washington Administration policy, responsibility for the discharge could be imputed to the City. See Monell v. New York City Department of Social Services, 436 U.S. 658 (1978).

Wzorek himself testified that he was warned by a supervisor, William Sommerford ("Sommerford"), that he had better continue to support the 12th Ward Organization to protect his job from the Washington Administration. See Deposition of Wzorek at 121–122. According to Wzorek, Sommerford also implied that Wzorek's \$1,000 contribution to Richard M. Daley was no secret, and that it could hurt Wzorek if Daley were not elected Mayor. *Id.* at 118. Harold Washington, of course, won the Democratic primary and the election. Thus, Wzorek has raised genuine issues of material fact with respect to the City's contention that politics played no part in his discharge.

The City's alternate contention, that Wzorek would have been fired irrespective of politics, is equally dubious. The City reminds the court that, as a probationary employee, Wzorek could be fired for any reason so long as the Department of Sewers notified the Commissioner of Personnel of that reason. See Schedule of Exhibits in Support of Defendant's Motion for Summary Judgment ("Schedule"), Exhibit E, Section 6, ¶ 7, and Exhibit F, Rule IX, Section 3. See also Fontano v. Chicago, 646 F.Supp. 599 (N.D.Ill.1985) (probationary employee has no due process right to pre-discharge hearing). However, the fact that Wzorek *could* have been fired at will does not mean he *would* have been fired irrespective of political considerations.

\*3 The City's main argument here is that Barnes' guidelines on probationary employees called for Wzorek's discharge. But this is far from self-evident. Barnes had announced he would dismiss anyone with more than ten absences without pay during the probationary period, but by the City's own count Wzorek had only seven and three-fourths.<sup>1</sup> Barnes had also announced he would discharge probationary employees with a history of poor work performance. The only two incidents of allegedly poor work performance to which the City can point were Wzorek's failure to wear a safety helmet in July, 1981, and his failure to follow a supervisor's order's in June, 1982. Even if Barnes was entitled to consider Wzorek's pre-probationary performance, Busa v. Barnes, 646 F.Supp. 619 (N.D.Ill.1986), a question the court need not address now, it is not clear that this performance would explain his dismissal. The City contends that a single failure to wear a safety helmet is sufficient cause for discharge, but Barnes admits that an isolated, two-year-old incident would probably not have been brought to his attention. Deposition of Barnes at 46–47. Wzorek's

failure to wear a helmet occurred only once and it occurred nearly three years before he was fired; his single, reported failure to follow orders, of which the court knows nothing more, occurred two years before. Schedule, Exhibit I. Juxtaposed to this dearth of negative feedback is evidence that Wzorek received very positive evaluations from his supervisors. See Lucille Aff. at ¶ 3; Deposition of Ned Madia at 29–30; Affidavit of Wzorek at ¶¶ 2–3.

In light of Wzorek's probationary attendance record and evidence regarding his overall job performance, there is a genuine issue of material fact as to whether Wzorek would have been fired irrespective of political considerations. Material factual questions thus remain as to each of the City's alternate contentions. Therefore, the City is not entitled to summary judgment.

### *III. Conclusion*

The City's motion for summary judgment is hereby denied.

## **All Citations**

Not Reported in F.Supp., 1987 WL 19801

## **Footnotes**

1

Wzorek disputes this figure as being too high, but the court sees no reason to attempt resolution of the dispute at this time.

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**Attachment N:**

Transcript of proceedings,  
Dated 04 August 1989

Eugene Wzorek, Plaintiff  
v.  
City of Chicago et al, Defendant

# 84-CV-9978

**Notes on Judge Duffs comments, 04 August 1989 transcript:**

As Page 150 (marked), line 18 through page 152, line 14 –

Justice Duff cites earlier ruling, 718 F. Supp 1386, dated 06 September 1988, wherein Plaintiff Wzorek was determined to requires extensive psychiatric treatment so that a proper medical and judicial determination can be made as to employment reinstatement.

Judge Duff further admits puzzlement as to how Defendant (City of Chicago et al) may have acquired this ruling in appellate court, and states Plaintiff Wzorek's inability to pay for this medically necessary treatment.

Judge Duff chides Defendant (City of Chicago et al) for depriving Wzorek of “any wages or any opportunity to have medical care. Judge Duff restates the nature of Equitable Award, and the need for Plaintiff's updated psychiatric reports, so that hearings may proceed.

Justice Duff further cites Defendant is “responsible for this man's psychological deterioration.” (as 10 pages)

1 IN THE UNITED STATES DISTRICT COURT  
2 FOR THE NORTHERN DISTRICT OF ILLINOIS  
3 EASTERN DIVISION

FILED

SEP 11 1989

4 EUGENE WZOREK,

5 Petitioner,

6 vs.

7 CITY OF CHICAGO, an Illinois  
8 municipal corporation,

9 Respondent. ) Chicago, Illinois

10  
11 TRANSCRIPT OF PROCEEDINGS  
12 BEFORE THE HONORABLE BRIAN BARNETT DUFF

13 APPEARANCES:

14 For the Petitioner: JOHN L. GUBBINS  
15 542 South Dearborn Street  
Chicago, IL 60605

16 For the Respondent: ASSISTANT CORPORATION COUNSEL  
17 180 North LaSalle Street  
Chicago, IL 60602  
18 By: Mr. Charles Ex

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20 CLERK'S FILE COPY

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Therese A. Pintozi  
Official Court Reporter  
219 South Dearborn, #2280  
Chicago, Illinois 60604



1 THE CLERK: 84 C 9978, Wzorek versus City of  
2 Chicago.

3 MR. GUBBINS: Good morning, your Honor, John  
4 Gubbins on behalf of the plaintiff.

5 MR. EX: Good morning, your Honor, Charles Ex  
6 on behalf of the Defendant, City of Chicago.

7 MR. GUBBINS: Your Honor, I apologize for not  
8 being here yesterday. I received the City's motion and  
9 memorandum, but I didn't receive the notice. I went  
10 back -- I got the call from Mr. Ex, and I went through  
11 my office yesterday.

12 We are in the process of unpacking, but the  
13 mail that was coming in, we kept segregated. I went back  
14 and looked at the envelope. I got the memo, but I did  
15 not get the notice. I apologize for not showing up.

16 THE COURT: Mr. Ex, did you send the notice?

17 MR. EX: Yes, your Honor. On that notice it  
18 clearly had the date and time on it. You know, I can't  
19 account for how Mr. Gubbins didn't receive it, but I know,  
20 I have a confirmation from my messengers.

21 THE COURT: Mr. Gubbins, I would like to say  
22 it's very easy to understand except for the fact that  
23 you so often are not attentive to the details of the  
24 cases. Unfortunately, you and I know that because you  
25 had so many in here.

1 MR. GUBBINS: Well, fewer these days, your  
2 Honor. .

3 THE COURT: Well, the fact remains that this  
4 is an extraordinarily difficult and complicated case.  
5 If you can't handle it, I don't think you should try it.

6 MR. GUBBINS: Your Honor, I didn't receive the  
notice.

8 THE COURT: It's not just that. Have you read  
9 the motion?

10 MR. GUBBINS: Yes, I have, your Honor. When we  
11 were here in court before, I received no formal discovery  
12 request. I was nice enough to tell Mr. Ex on the record  
13 who our witnesses were going to be. Then he said he  
14 wanted Mr. Goldman's report. He has Mr. Goldman's  
15 resume because Mr. Goldman's figures were used as part of  
16 the evidence on the first hearing of this before your  
17 Honor last fall or last summer.

18 So he knows who Mr. Goldman is. He has his  
19 first report. He knows the assumptions that Mr. Goldman  
20 was working with from that first re<sup>P</sup>ort. What he wants  
21 now -- and I have no formal discovery request from them.  
22 You know, just out of agreement, I am going to give him  
23 Mr. Goldman's report. I talked to Mr. Goldman yesterday.  
24 I will present Mr. Goldman for his deposition next week  
25 if they want to.

1 Now, I asked the City for their witnesses, and  
2 they said we don't know. That's usually the response I  
3 get.

4 THE COURT: It's very simple. **Make** it formal.  
5 If they don't tell you, I won't let them put on any  
6 witnesses. You give them the deposition of Goldman but  
7 attend to the fact that they claim that Goldman is only  
8 a mathematician and shouldn't be able to talk about  
9 economics. Attend to the fact that they say that front  
10 pay is only intended as a short-term, remedial measure.  
11 Although, they don't give you cases in equity, I don't  
12 think. Attend to all those matters and be prepared to  
13 answer them.

14 MR. GUBBINS: I will, your Honor. I will.

15 THE COURT: When? I don't want to read them  
16 the day of the hearing.

17 MR. GUBBINS: Okay. What would be the best  
18 date for your Honor to receive them, and I will make it  
19 that date.

20 THE COURT: You tell me.

21 MR. GUBBINS: Wednesday of next week.

22 THE COURT: All right. Get them in by  
23 Wednesday of next week.

24 MR. EX: Your Honor, if I could just respond to  
25 a couple of the representations Mr. Gubbins made. When

1 Mr. Gubbins first came into this case over a year ago,  
2 we formally filed expert witness interrogatories and  
3 discovery requests. As we represented in our motion,  
4 there was an issue of backpay that has been resolved.

6 Mr. Goldman had rendered a report, and we had  
6 seen that report. I had conversations with Mr. Gubbins  
7 when he made the representation when it became clear that  
8 the hearing was going to be moved up to August 16. If he  
9 intended to use Mr. Goldman, what report was he using?  
10 If he was going to use the same report that had been  
11 subject to the earlier proceedings, that's all he had to  
12 tell me. That's not what he told me.

13 Mr. Gubbins told me that he was going to get  
14 a report from Mr. Goldman and get it to me. I could  
15 only infer from that that he was going to be making  
16 assumptions of something other than what had already been  
17 tendered.

18 THE COURT: Mr. Ex, I made a ruling. I said  
19 how much money you should give this man. I also said  
20 that he should be able to take psychiatric care for the  
21 next six months, so that after those six months, I could  
22 make a determination of whether or not he should be  
23 reinstated.

24 You don't want him to have any money so you  
went u<sup>P</sup>stairs and got a stay on some basis I still don't

1 understand, and the man doesn't have any money to pay  
2 a psychiatrist to do what he has to do in order for me  
3 to reinstate him.

4 Now, you have set up a situation by your own  
5 choosing to deprive the' man of-any wages or any oppor-  
6 tunity to have medical care. So Mr. Gubbins asked could  
7 we advance. this so we can take the pain off.

8 MR. EX: I understand that.

9 THE COURT: And I said, "Yes, we can advance  
10 it." That's because of your actions, not Mr. Gubbins'  
11 actions. His response to the situation was only because  
12 of the City just absolutely refusing to let the nature  
13 and spirit of my order be conducted by depriving the man  
14 of any money by which he could have his psychiatric care  
15 that he must have for me to make the ruling.

16 Now, that's a dilemma of a great impact. It  
17 was of your 'making. You make it; we will resolve it.  
18 This is an equitable proceeding. I am going to see to  
19 it that I get the psychiatric reports on this man before  
20 the City is off the hook. The front pay, if that's what  
21 you want to call it, is going to depend upon your  
22 allowing that to happen, okay?

23 So you are not going to sit there and not let  
24 this man get the psychiatric care that's going to be  
25 necessary for the doctor to be able to make a decision as

1 to whether he should be reinstated. If this case has to  
2 take 20 years, I will keep jurisdiction over it. Pretty  
3 soon the City of Chicago will owe the man a million  
4 dollars.

5 As far as I am concerned, I made a ruling on  
6 a liquidated amount. You don't want to pay it. Interest  
7 is going to run, and I know the City has now got the  
8 Seventh Circuit to say that they don't have to pay what  
9 they owe. That's a whole other story. This is an  
10 equitable ruling, and it's a function where the City is  
11 responsible for this man's psychological deterioration.)  
12 to If you want to have them amend the pleadings  
13 consider all of those elements, we will let them, if  
14 that's what you are after.

15 MR. EX: Your Honor --

16 THE COURT: Just a minute. I will take no more  
17 of this informal discussions, "I told them informally a  
18 year ago," and so forth. Mr. Gubbins, don't be sloppy.  
19 Put it in writing.

20 Mr. Ex, don't be slopPy, and put it in writing.  
21 Both of you be ready for that hearing.

22 MR. EX: I will, your Honor. I just want to be  
23 clear as to the disposition of the motion in front of  
24 today. That is that you are going to give Mr Gubbins a  
25 chance to resPond to that.

THE COURT: I said he could res<sup>P</sup>ond on  
Wednesday.

MR. EX: We should proceed to take the  
de<sup>P</sup>osition of Mr. Goldman?

THE COURT: Yes.

MR. EX: Your Honor, I am going to be out of  
town next week. I would like to ask for leave to take  
that deposition a week from Monday.

THE COURT: No, sir. That hearing is set for  
a week from Thursday?

MR. EX: Either a week from Thursday.

THE CLERK: Wednesday, Judge.

THE COURT: You are going to give us three  
days?

MR. EX: Your Honor, I don't anticipate that  
deposition is going to be a very long --

THE COURT: You are insistent on taking it, sir,  
and you know when the hearing is set for --

MR. EX: That's right, your Honor.

THE COURT: -- and you are being absolutely  
intractable with everybody in the <sup>P</sup>roceedings in this  
case. Now, I am not going to delay that. Take it before  
you leave then.

MR. EX: That would be im<sup>P</sup>ossible at this <sup>P</sup>oint  
since I am going to be leaving later today, and I haven't

even received a co<sup>P</sup>y of the report.

THE COURT: Let somebody else take it. You  
3 have got a young lady that's been working with you as a  
4 lawyer on this case from the very beginning. She can  
5 handle it.

6 MR. EX: That's right, your Honor, but --

7 THE COURT: You say it's a very short  
8 de<sup>P</sup>osition, a very small deposition.

9 MR. EX: I would anticipate that.

10 THE COURT: Let your other lawyer take it.

11 MR. EX: I would do that. She has also already  
12 left for a vacation this week. Both of these things were  
13 scheduled before either of us had the knowledge that this  
14 proceeding was going to be moved up.

15 THE COURT: The proceeding was moved u<sup>P</sup>  
16 because you are not allowing the man to even have the  
17 medical care he needs. You will have to cancel your  
18 vacation if you have to let us find out where the man  
19 gets his medical care.

20 His medical care is more important than your  
21 vacation, Mr. Ex, considering the way you've been in a  
22 rather cavalier fashion deciding what you want to do  
23 without regard to what anybody else wanted to do.

24 Next case.



C E R T I F I C A T E

I certify that the foregoing is a correct transcript of  
the record of proceedings in this case on August 4, 1989.

Theresa L. Pittag      Sept. 5, 1989

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**Attachment P:**

05-CV-4141

Eugene Wzorek, Plaintiff

v.

City of Chicago et al, Defendant  
(case arising directly from # 84-CV-9978)

Copy or original filing, dated 15 July 2005,  
date stamped "JUL 19 2005".

Submitted as attachment, minus Exhibits  
(for reasons of brevity, repetition of certain documentation)

Submitted as 12 pages.

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

RECEIVED  
JUL 19 2005  
MICHAEL W. LORING  
CLERK, U.S. DISTRICT COURT

EUGENE WZOREK  
PLAINTIFF,

vs.

CITY OF CHICAGO, an Illinois  
Municipal Corporation  
Defendant,

) Case No.

) Verified Complaint

) JUDGE LINDBERG  
) JURY DEMANDED

) MAGISTRATE JUDGE DENLOW

05C 4141

- (1) Comes now, Eugene Wzorek, by and through his Attorney, Robert K Lock, Jr., herein after "Plaintiff", pursuant to rule 18(a), United States District Court, N.D., Ill., and hereby moves this court for an order requiring the City of Chicago, the above named Defendant, to show cause why Defendant should not be held in civil contempt and brought before the court to answer for its continuing violation of the injunction reported in Shackman v. Democratic Org. of Cook Co., 481 F. Supp. 1315, 1356-59 (N.D. Ill. 1979), and as grounds shows the following.

Jurisdiction

2. The court has jurisdiction over this cause and the parties pursuant to 28 USC §1331 and by reason of the consent decree reported in Shackman v. Democratic Org. of cook Co., 481 F. Supp. 1315, 1356-59 (N.D. Ill. 1979) (herein after "Shackman decree"), as well as pursuant to Rule 60(b), Fed. R. Civ. P.

Parties

3. Eugene Wzorek (herein after "Wzorek") is the Petitioner in the above, entitled cause and a  
Complaint

Page 1 of 12

former Motor Truck Driver for the Department of Sewers of the City of Chicago.

4. The City of Chicago (herein after "City"), a Municipal Corporation, is the Defendant in the Shakman decree.

#### Factual Background

5. On May 5<sup>th</sup>, 1972, a judgment was entered by Hon. Abraham L. Marovitz, Judge of the United States District Court in and for the Northern District of Illinois, Eastern Division, permanently enjoining the City from discharging employees based upon "any political reason or factor".
6. The City consented to entry of the foregoing judgment.
7. The Shackman decree has subsequently been enforced in this district by Judge Bua, Judge Decker and Judge Duff.
8. On March 21<sup>st</sup>, 1989, judgment was rendered in favor of Wzorek as Plaintiff in Wzorek v. City of Chicago, 708 F. Supp. 954 (N.D. Ill. 1989) and subsequently used as case precedence.
9. The court found that Wzorek proved by clear and convincing evidence that he was discharged by the City for "improper political reasons" in violation of the shackman decree.
10. The court found that the City's violation of the Shackman decree was willful and that the actions of Wzorek's supervisors amounted to "deliberate and malicious conduct".
11. The court found that the City's termination of Wzorek "precipitated the emotional problems" from which Wzorek suffers.
12. The court awarded Wzorek \$132,825.33 in lost wages and salary, \$13,833.35 in prejudgment interest, \$3,750.00 in medical expenses, and \$870.00 for prescription costs (offset by \$6,118.00 in unemployment compensation).

13. The court further awarded Wzorek equitable relief in the form of paying him money for the future, and benefits, which, along with Wzorek's request for reinstatement, the court ruled would be treated in a supplemental proceeding.
14. On August 4<sup>th</sup>, 1989, the court stated that,

"the City is responsible for this man's [Wzorek] psychological deterioration".

See Transcript of August 4<sup>th</sup>, 1989 at 4, lines 10-11, attached hereto, in pertinent part, as Exhibit A and incorporated as fully set forth herein.
15. On August 16<sup>th</sup>, 1989 the court stated that:

"... there was no equitable rule limiting its ability to pay Wzorek money for the future except the time at which he should retire and that if Wzorek "can't work for the rest of his life because of the City of Chicago, then as far as I'm concerned he should be paid for the rest of his life by the City of Chicago".

See Transcript of August 16<sup>th</sup>, 1989 at 7, lines 22-25 through 8, lines 1-3, attached hereto, in pertinent part, as Exhibit B and incorporated by reference as though fully set forth herein.
16. On August 16<sup>th</sup>, 1989 the court appointed psychiatrist, Dr. Jan Fawcett, M.D., testified that Wzorek suffered from depression, agoraphobia, a sleep disorder, and that Wzorek was antidonic.
17. On August 16<sup>th</sup>, Dr. Fawcett also testified that without adequate and immediate treatment, Wzorek's disabilities would become "fixed and chronic". See Exhibit B at 16, lines 23-25 through 17, lines 1-16. Wzorek has gone untreated to this day.
18. On August 16<sup>th</sup>, Dr. Fawcett further testified that the cost of Wzorek's rehabilitation would "skyrocket" with each passing month that Wzorek was not actively participating in an effective treatment program. See Exhibit B at 17, lines 17-21.
19. Dr. Fawcett also testified on August 16<sup>th</sup>, 1989 that "if we're sitting here a year from now having the same conversation, my conclusion might well be that he [Wzorek] is chronically

disabled, that's it". See Exhibit B at 18, lines 2-6.

20. On September 6<sup>th</sup>, 1989, the court awarded Wzorek an additional \$14,500.00 in lost wages and salary, \$362.50 in prejudgment interest, \$33,518.17 for pay for one year into the future while he received treatment, and additional equitable relief (not an award of damages) as a means of providing for Wzorek's psychiatric care up to the amount of \$150,000.00 in an effort to rehabilitate Wzorek so he might be reinstated.
21. The court reiterated that, during the aforementioned proceedings, the conduct of City attorney's Mary L. Smith and Charles Ex, toward Wzorek, was malicious and brutal, and that said attorneys failed to adhere to directives of the court.
22. Said City attorneys likewise attempted to mislead the court by maintaining that the City could not be held liable for the acts of it's middle managers, when said attorneys knew that such an argument was already foreclosed by the Seventh Circuit's previous Shackman decision in the Cardilli case (reported in 533 F.2d 344, 352-53 (7<sup>th</sup> Cir. 1976)), which described said position as being "patently frivolous".
23. On July 13<sup>th</sup>, 1990, the Seventh Circuit Court of appeals affirmed all aspects of the district court's March and September 1989 orders, with the exception of the ruling pertaining to future contingent psychiatric funds, which the appellant court reversed on grounds of the law of the case doctrine.
24. On July 21<sup>st</sup>, 1994, the court found that:

"....this particular case represents the very worse of civil justice system. It represents the worst of politics. The Man [Wzorek] was clearly fired for political reasons. He has serious deep emotional problems. He is incompetent to take care of himself. Nobody is allowing him to be taken care of. All you ever do is fight each other and fight the Court's rulings and make a further disgrace out of it. It is a disgrace".

See Transcript of July 21<sup>st</sup>, 1994 at 4, lines 14-21, attached hereto, in pertinent part, as Exhibit C and

incorporated by reference as though fully set forth herein.

**Contumacious Conduct**

25. Notwithstanding the entry of the Shackman decree, the City has continued and is continuing to violate said injunctive decree and the damages from such violations continue to accrue.
26. Wzorek's continued need for medical care has not ceased, nor have Wzorek's rights been resolved in this respect.
27. Wzorek has not, been reinstated by the City to his former position nor has this issue ever been resolved.
28. Wzorek has not been compensated by the City for the remainder of his life in lieu of reinstatement.
29. Wzorek has not received comparable pension benefits from the City in lieu of reinstatement.
30. Wzorek has not, been compensated by the City for lost wages and salary from September 1990 until present, which nonpayment, with each passing pay period, constitutes a separate and distinct violation.
31. Wzorek has not been paid interest by the City on his lost wages and salary between 1990 and the present.
32. Wzorek has not been reimbursed by the City for a majority of the medical and prescription expenses incurred by Wzorek from March 1989 to the present.
33. Wzorek has not, been placed in a comparable health plan by the City in lieu of reinstatement, nor was he advised upon termination from the City employment of his option to continue coverage under the Cobra plan.
34. As a direct and proximate cause of the City's political discharge of Wzorek, the disabilities



precipitated by such discharge, the side effects of the medication required to treat such disability, the stress and agitation caused by more than (10) ten years of protracted litigation following Wzorek's termination, and the strain which such events have had upon Wzorek's family relations, Wzorek has suffered severe mental anguish and extreme emotional pain and suffering, as well as loss of enjoyment of life.

35. As a direct result of the medication required to treat Wzorek's disabilities precipitated by the City's discharge, Wzorek has suffered loss of consortium with his wife, including a loss of companionship, happiness and sexual relations.
36. Wzorek has suffered additional loss of consortium as a result of the fact that his wife has had to assume the role of breadwinner since Wzorek's termination by the City.
37. As a direct and proximate result of the City's discharge, Wzorek has suffered aggravation of his illness and permanent damage as a result of the fact that he failed to timely receive the prescribed intensive treatment required, as well as from over a decade of ensuing litigation and its concomitant stress.
38. As a further consequence of the disabilities precipitated by the City's political discharge, Wzorek will incur for the remainder of his life, medical and prescription expenses, including costs for therapy.
39. As a direct and proximate cause of the City's political termination of Wzorek's employment, the resulting lack of wages and salary, the protracted litigation which followed, and debts incurred as a result of such circumstances and in pursuing said litigation, Wzorek suffered economic loss and investment opportunities in having to sell his home at 3751 W. 75<sup>th</sup> St. in Chicago, Illinois for approximately \$106,000.00 in September 1990 in order to pay off debts so incurred.
40. As a direct and proximate cause of the loss of his home as specified in paragraph 39, Wzorek

and his family have had to move to Wzorek's mother's home located at 4344 S. Honore in Chicago, Illinois, where Wzorek has suffered mental anguish and emotional distress, along with loss of enjoyment of life, since said home is located in a gang infested neighborhood in which Wzorek's physical safety and that of his family are placed at risk each time they leave the house.

41. As a further result of the above described conduct of the City, Wzorek has been and will be required to expend money for legal fees and costs to secure the City's compliance with the Shackman decree and the recovery of damages resulting from the City's violation thereof.

#### **Fraud on the Court**

42. On July 20<sup>th</sup>, 1989, a hearing was held before the court, the transcript of which was prepared on August 21<sup>st</sup>, 1989, filed in the office of the Clerk of the United States District Court on August 23<sup>rd</sup>, 1989, and docketed on August 24<sup>th</sup>, 1989 as R139. See Transcript of July 20<sup>th</sup>, 1989 attached hereto, in pertinent part, as Exhibit D and incorporated by reference as though fully set forth herein.
43. On August 16<sup>th</sup>, 1989 an evidentiary hearing was held before the court on the issue of reinstatement and additional relief for Wzorek at which Dr. Fawcett, M.D., and Wzorek testified.
44. The transcript of the August 16<sup>th</sup>, 1989 hearing was prepared on September 18<sup>th</sup>, 1989.
45. During the period between September 18<sup>th</sup>, 1989 and October 2<sup>nd</sup>, 1989 at a precise date unknown to Wzorek, The City, by and through its agents, servants, employees and attorneys, did willfully engage in a scheme to alter by suppression, concealment or omission the true and actual record of proceeding before the court, to deprive Wzorek of the opportunity to have a full and fair hearing of his case in the appellate court, and to otherwise deceive the

United States Court of Appeals for the Seventh Circuit by fraud or misrepresentation in pursuing its appeal before that court.

46. The City affected its scheme at the Federal Courthouse located at 219 S. Dearborn St., Chicago, Illinois.
47. In furtherance of this scheme, the City removed the first six (6) pages of the actual August 16<sup>th</sup>, 1989 hearing transcript (attached hereto as Exhibit B) and substituted in their place the first six (6) pages (which included the cover page) of the aforementioned July 20<sup>th</sup>, 1989 hearing transcript.
48. The portions of the actual August 16<sup>th</sup>, 1989 hearing transcript, which were so removed, contained findings and statements by Judge Duff; the remaining portions of the transcript, which contained the testimony of Dr. Jan Fawcett and Wzorek, were left intact.
49. The altered August 16<sup>th</sup>, 1989 hearing transcript was filed in the office of the Clerk of the United States District Court on October 2<sup>nd</sup>, 1989 and docketed [as representing a July 20<sup>th</sup>, 1989 hearing transcript] on October 3<sup>rd</sup>, 1989 as R155. See Altered Transcript of August 16<sup>th</sup>, 1989 attached hereto, in pertinent part, as Exhibit E and incorporated by reference as though fully set forth herein.
50. The July 20<sup>th</sup>, 1989 and August 16<sup>th</sup>, 1989 transcripts could not have been inadvertently or mistakenly combined during their preparation since the July 20<sup>th</sup>, 1989 transcript was already docketed in the Clerk's office almost one (1) month prior to the date on which the August 16<sup>th</sup>, 1989 transcript was prepared.
51. The first six (6) pages of the correct August 16<sup>th</sup>, 1989 transcript contained material findings of fact markedly adverse to the City.
52. Therein, Judge Duff twice reiterated his conclusion that the City was solely responsible for Wzorek's emotional condition, stating:

"It was my thought, I'll tell you frankly, that the City caused this problem"

(See Exhibit B at 5, lines 1-2) and "The City, in my opinion, caused Mr. Wzorek's problem. Okay. I've said as much". Id. At 6, lines 1-2.

53. In addition, these pages contained remarks by Judge Duff clarifying the equitable nature of his ruling regarding the contingent psychiatric treatment fund and a statement criticizing the City's actions with respect to Wzorek and finding that:

"The Sheriff of Nottingham could not fashion a better result".

See Exhibit B at 6, lines 17-18.

54. On July 13<sup>th</sup>, 1990, the Seventh Circuit Court of Appeals reversed the trial court's equitable ruling ordering the City to pay up to the amount of \$150,000.00 for Wzorek's psychiatric treatment on the grounds that the court failed to find the City directly responsible for Wzorek's emotional condition.
55. The appellate court rendered the aforementioned decision without benefit of the district court's explicit findings to the contrary, which were contained in the first six (6) pages of the actual August 16<sup>th</sup>, 1989, transcript and specified in paragraph 64.
56. The only ruling of the district court reversed from either the March or September 1989 orders was the psychiatric treatment ruling.
57. The only ruling of the trial court affected by the first six (6) pages of the correct August 16<sup>th</sup>, 1989 transcript was the psychiatric treatment ruling.
58. The City knew that the transcript docketed as R155 was inaccurate.
59. In the City's opening brief on appeal in Case No. 89-2988, the City stated in a footnote that the cover page of R155 was "misdated", but did not inform the appellate court that the next five (5) pages were incorrect. See Exhibit F, at 6 n. 1, attached hereto, in pertinent part, and incorporated by reference as though fully set forth herein.

60. As a direct and proximate cause the City's suppression of said pages and concealment of said fact, the appellate court was deprived of an accurate and complete record on appeal and was in fact deceived and otherwise defrauded.
61. The, correct August 16<sup>th</sup>, 1989 transcript was subsequently obtained by Wzorek as a result of the Illinois Attorney Registration and Disciplinary Commission's (A.R.D.C.) seizure and return of the records of Wzorek's former attorney, John Gubbins. See Exhibit B.
62. While the text of said transcript is correct, the signature page contains a different and incorrect signature and date as compared to the date and signature on the signature page of R155. See Exhibit B at 81 and Exhibit E at 81.
63. The erroneous nature of the transcript docketed, as R155 was first discovered by Wzorek in February or March of 1994 and was communicated to Wzorek by Wzorek's former attorney Thomas Arnett.
64. The correct August 16<sup>th</sup>, 1989 transcript (with exception of the date on the signature page) was docketed as R219 in the Office of the Clerk of the United States District Court on April 14<sup>th</sup>, 1994, which date is almost four (4) years after the date on which the appeals in Wzorek's case was decided. See Corrected Transcript of August 16<sup>th</sup>, 1989, attached hereto, in pertinent part, as Exhibit G and incorporated by reference as though fully set forth herein.
65. As a direct and proximate cause of the City's conduct as set forth above, Wzorek has been deprived of the necessary intensive and immediate psychiatric treatment articulated by Dr. Fawcett and contemplated by Judge Duff, has had to participate in extensive additional and stressful litigation, has suffered extreme mental anguish and severe emotional pain and suffering, as well as loss of enjoyment of life, has suffered aggravation of his illness, has suffered economic loss by being deprived of both the opportunity to obtain reinstatement to his City job, and the compensation that would accompany the reinstatement, and has been

and will be required to expend money on legal fees and costs to remedy the results of the City's actions.

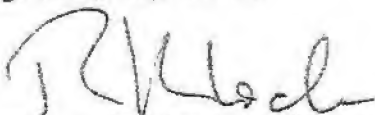
**Prayer for Relief**

66. WHEREFORE, for the foregoing reasons, the Plaintiff respectfully prays this Honorable Court grant the following relief:
67. Issue an order requiring the City to pay the following amounts for the City's conduct and actions in this case, to wit;
68. The City should be required to compensate Plaintiff for damages occasioned by the City's conduct and actions, including:
69. Compensation for lost wages and salary from September 1990 to date, in the amount of \$624,000.00, and,
70. Prejudgment interest in the amount of, \$62,400.00, and,
71. Compensation for the remainder of Plaintiff's lifetime employment in the amount of, \$768,000.00, and,
72. Comparable pension benefits of 70% of actual annual wages or salary in the amount of \$504,000.00, and,
73. Compensation for a comparable health plan in lieu of reinstatement in the amount of \$154,800.00, and,
74. Compensation for mental anguish and emotional distress, as well as loss of enjoyment of life to include, loss of consortium, aggravation of illness, economic loss and pain and suffering in the amount of \$5,000,000.00, and,
75. The court should order \$250,000.000 in compensation for the ongoing treatment of the illness, and,

76. Reasonable attorney's fees and additional litigation expenses incurred in seeking relief from the City's continuing violation of the Shackman decree, and,
  77. Conduct a full evidentiary hearing on the issues presented herein, and,
  78. Enter appropriate findings of fact and conclusions of law pursuant to Rule 60(b), Fed. R. Civ. P., or otherwise formally inquire into the alteration of the August 16<sup>th</sup>, 1989 hearing transcript, and,
  79. Order the City to compensate Plaintiff for damages Plaintiff has suffered as a result of the City's fraudulent conduct and actions described herein above, including,
  80. Compensation for mental anguish and emotional distress, as well as loss of enjoyment of life, aggravation of illness, economic loss, including past and future wages, salary and pension, attorney's fees and costs of additional litigation caused by the fraud upon the court, in the amounts mentioned above, and,
  81. Any other relief the court deems just and proper.
- Plaintiff herein under oath, pursuant to Title 28 USC §1746, attests to the above under penalties of perjury

Dated this 15<sup>th</sup> day of July, 2005.

  
Eugene Wzorek, Plaintiff

  
Robert K Lock, Jr., Attorney for Plaintiff

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**And ADDITIONAL Attachment Q,  
for the record, SCOTUS filing:**

Writ of Certiorari, application,  
pursuant to  
USCOA Seventh Circuit,  
pertaining to case #95-3470

Eugene Wzorek, Plaintiff

v.

City of Chicago et al, Defendant  
(case arising directly from litigation in # 84-CV-9978)

Attachment consists of:

Item 1: Original application to SCOTUS,  
consisting of 20 pages (not a notarized copy)

Item 2: copy of USCOA Seventh Circuit ruling,  
case # 95-3470; herein,  
citing UNPUBLISHED OPINION;  
consisting of 2 pages.

Item 3: United States Reports  
Volume 519  
Cases Adjudged in the Supreme Court  
at October Term 1996  
(07 Oct. 1996 through 26 Feb. 1997)  
Frank D. Wagner, Reporter of Decisions  
Washington 1999

As excerpted, begin through page 7;  
then pg. CLXIX (for Wzorek listing, contents);  
and page 1067, "Order", showing case number 96-6803, Wzorek v. City of Chicago,  
listing decision as "Certiorari denied. Reported below: 86 F. 3d 1158" (9 pages)

Total of 31 pages, as documented.

No. \_\_\_\_\_

\_\_\_\_\_  
IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1995  
\_\_\_\_\_

Eugene Wzorek — PETITIONER  
(Your Name)

VS.

City of Chicago — RESPONDENT(S)

ON PETITION FOR A WRIT OF CERTIORARI TO

the United States Court of Appeals for the Seventh Circuit  
(NAME OF COURT THAT LAST RULED ON MERITS OF YOUR  
CASE)

PETITION FOR WRIT OF CERTIORARI

Eugene Wzorek  
(Your Name)  
4344 S. Honore  
(Address)  
Chicago, Illinois 60609  
(City, State, Zip Code)  
(312) 890-0280  
(Phone Number)

## QUESTION(S) PRESENTED

1. Whether deprivation of constitutional right of access to the courts occurs when court refuses to address merits of petitioner's pending Rule 60(b) motion alleging fraud on the court concerning alteration of official court transcripts?

2. Whether First Amendment's guarantee of right of access to judicial records and the Court Reporter's Act (28 U.S.C. 753(b)) entitle petitioner to hear court reporter's electronic sound recording tapes of petitioner's trial in order to resolve discrepancies in written transcripts?

## **LIST OF PARTIES**

☒ All parties appear in the caption of the case on the cover page.

☐ All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

## TABLE OF CONTENTS

|  |    |
|--|----|
| OPINIONS BELOW .....                                   | 1  |
| JURISDICTION .....                                     | 2  |
| CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED ..... | 3  |
| STATEMENT OF THE CASE .....                            | 4  |
| REASONS FOR GRANTING THE WRIT .....                    | 7  |
| CONCLUSION .....                                       | 14 |

## INDEX TO APPENDICES

|            |  |
|------------|--|
| APPENDIX A | Decision of the United States Court of Appeals<br>for the Seventh Circuit, dated May 24, 1996.   |
| APPENDIX B | Decision of the United States District Court<br>for the Northern District of Illinois, Eastern<br>Division, dated February 27, 1995.   |
| APPENDIX C | Transcript of proceedings containing oral state-<br>ment of reasons delivered by district court in<br>denying petitioner's motion to produce court<br>reporter's electronic sound recording tapes,<br>dated July 23, 1992. |
| APPENDIX D | Order of the United States Court of Appeals<br>for the Seventh Circuit denying timely filed<br>petition for rehearing, order dated July 3, 1996.   |
| APPENDIX E |  |
| APPENDIX F |  |

# TABLE OF AUTHORITIES CITED

|   | <u>Page</u> |
|---|-------------|
| CASES   |             |
| <u>Application of CBS, Inc., In re</u> , 540 F. Supp. 769<br>(N.D. Ill. 1982).....  | 11          |
| <u>Bounds v. Smith</u> , 430 U.S. 817 (1977).....   | 8           |
| <u>Bremiller v. Cleveland Psychiatric Institute</u> , 879 F. Supp.<br>782 (N.D. Ohio 1995).....   | 9           |
| <u>California Motor Transport Co. v. Trucking Unlimited</u> ,<br>404 U.S. 508 (1972).....   | 7           |
| <u>CBS, Inc. v. U.S. Dist. Court</u> , 765 F.2d 823 (9th Cir.<br>1985).....   | 13          |
| <u>Chambers v. Baltimore &amp; O.R.R.</u> , 207 U.S. 142 (1907).....  | 7           |
| <u>Chambers v. Nasco, Inc.</u> , 501 U.S. 32 (1991).....  | 9           |
| <u>Craig v. Harney</u> , 331 U.S. 367 (1947).....   | 12          |
| <u>Curro v. Watson</u> , 884 F. Supp. 708 (E.D.N.Y. 1995).....  | 8           |
| <u>Grove Fresh Distributors, Inc. v. Everfresh Juice Co.</u> ,<br>24 F.3d 893 (7th Cir. 1994).....  | 11          |
| <u>Hansberry v. Lee</u> , 311 U.S. 32 (1940).....   | 7           |
| <u>Hazel-Atlas Glass Co. v. Hartford-Empire Co.</u> , 322 U.S.<br>238 (1944).....   | 9           |
| <u>Joint Anti-Fascist Refugee Comm. v. McGrath</u> , 341 U.S.<br>123 (1951).....  | 8           |
| <u>Monroe Div., Litton Business Systems, Inc. v. DeBari</u> ,<br>562 F.2d 30 (10th Cir. 1977).....  | 9           |
| <u>Nixon v. Warner Communications, Inc.</u> , 435 U.S. 589<br>(1978).....   | 11          |
| <u>Richmond Newspapers, Inc. v. Virginia</u> , 448 U.S. 555<br>(1980).....  | 12          |
| <u>Shakman v. Democratic Org. of Cook Cty.</u> , 481 F. Supp.<br>1315 (N.D. Ill. 1979), rev'd in part sub nom.<br><u>Shakman v. Dunne</u> , 829 F.2d 1387 (7th Cir. 1987),<br>cert. denied, 484 U.S. 1065 (1988)..... | 4           |

|   | <u>Page</u> |
|---|-------------|
| <u>Smith v. U.S. Dist. Court</u> , 956 F.2d 647 (7th Cir. 1992)...  | 11          |
| <u>Societe Internationale v. Rogers</u> , 357 U.S. 197 (1958)....   | 8           |
| <u>United States v. Antoine</u> , 906 F.2d 1379 (9th Cir.),<br>cert. denied, 498 U.S. 963 (1990).....   | 10          |
| <u>United States v. Edwards</u> , 672 F.2d 1289 (7th Cir. 1982)..   | 12          |
| <u>United States v. Guzzino</u> , 766 F.2d 302 (7th Cir. 1985)...   | 12          |
| <u>United States v. Mitchell</u> , 551 F.2d 1252 (D.C. Cir.<br>1976), rev'd on other grounds sub nom. <u>Nixon v.</u><br><u>Warner Communications, Inc.</u> , 435 U.S. 589 (1978).... | 11, 13      |
| <u>United States v. Throckmorton</u> , 98 U.S. 61 (1878).....   | 9           |
| <u>Williams v. Hatcher</u> , 890 F.2d 993 (7th Cir. 1989).....  | 9           |
| <u>Wolff v. McDonnell</u> , 418 U.S. 539 (1974).....  | 7, 9-10     |
| <u>Wzorek v. City of Chicago</u> , 708 F. Supp. 954 (N.D. Ill.<br>1989).....  | 4           |
| <u>Wzorek v. City of Chicago</u> , 718 F. Supp. 1386 (N.D. Ill.<br>1989).....   | 4           |
| <u>Wzorek v. City of Chicago</u> , 906 F.2d 1180 (7th Cir. 1990).   | 5           |

#### STATUTES AND RULES

|   |           |
|---|-----------|
| Art. IV, Sec. 2, United States Constitution.....      | 3, 7      |
| First Amendment, United States Constitution.....      | 3, 7, 11  |
| Fifth Amendment, United States Constitution.....      | 3, 8      |
| Fourteenth Amendment, United States Constitution..... | 3, 7      |
| 28 U.S.C. 753(b).....                                 | 3, 11, 13 |
| 28 U.S.C. 1254(1).....                                | 2         |
| 28 U.S.C. 1331.....                                   | 4         |
| 28 U.S.C. 1343(a)(3).....                             | 4         |
| Rule 10(a), Sup. Ct. R. ....                          | 7, 10     |
| Rule 10(c), Sup. Ct. R. ....                          | 7, 10, 13 |
| Rule 60(b), Fed. R. Civ. P. ....                      | 3, 5-10   |

IN THE  
SUPREME COURT OF THE UNITED STATES  
OCTOBER TERM, 1995

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

☒ For cases from **federal courts**:

The opinion of the United States court of appeals appears at Appendix A to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

The opinion of the United States district court appears at Appendix B to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☒ is unpublished.

☐ For cases from **state courts**:

The opinion of the highest state court to review the merits appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.

The opinion of the \_\_\_\_\_ court appears at Appendix \_\_\_\_\_ to the petition and is

☐ reported at \_\_\_\_\_; or,  
☐ has been designated for publication but is not yet reported; or,  
☐ is unpublished.



## JURISDICTION

☒ For cases from federal courts:

The date on which the United States Court of Appeals decided my case was  
May 24, 1996.

☐ No petition for rehearing was timely filed in my case.

☒ A timely petition for rehearing was denied by the United States Court of Appeals on the following date: July 3, 1996, and a copy of the order denying rehearing appears at Appendix D.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A-\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

☐ For cases from state courts:

The date on which the highest state court decided my case was  
\_\_\_\_\_. A copy of that decision appears at Appendix \_\_\_\_\_.

☐ A timely petition for rehearing was thereafter denied on the following date: \_\_\_\_\_, and a copy of the order denying rehearing appears at Appendix \_\_\_\_\_.

☐ An extension of time to file the petition for a writ of certiorari was granted to and including \_\_\_\_\_ (date) on \_\_\_\_\_ (date) in Application No. A-\_\_\_\_\_.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article IV, Section 2 of the United States Constitution provides in pertinent part:

The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States.

The First Amendment to the United States Constitution provides in pertinent part:

Congress shall make no law . . . abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

The Fifth Amendment to the United States Constitution provides in pertinent part:

No person shall . . . be deprived of life, liberty, or property, without due process of law; . . .

Section 1 of the Fourteenth Amendment to the United States Constitution provides in pertinent part:

... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

28 U.S.C. 753(b) provides in pertinent part:

Each session of the court . . . shall be recorded verbatim by shorthand, mechanical means, electric sound recording, . . .

The original notes or other original records and the copy of the transcript in the office of the clerk shall be open during office hours to inspection by any person without charge.

Rule 60(b), Fed. R. Civ. P., provides in pertinent part:

This rule does not limit the power of a court . . . to set aside a judgment for fraud upon the court.

## STATEMENT OF THE CASE

The basis for federal jurisdiction in the court of first instance, i.e., the district court, was 28 U.S.C. 1331, 28 U.S.C. 1343(a)(3), and by reason of the consent decree entered in Shakman v. Democratic Org. of Cook Cty., 481 F. Supp. 1315, 1356, 1358-59 (N.D. Ill. 1979).

The questions presented in this petition are legal in nature, and are thus not fact-sensitive. The following statement provides a concise overview of the factual background upon which the present issues are predicated.

On June 29, 1984, Petitioner Wzorek was discharged by the Respondent City of Chicago ("City") from his position as a motor truck driver for the City's Department of Sewers. At trial, Petitioner (acting pro se) successfully proved that he had been unlawfully discharged for political reasons by the City in violation of the consent decree entered in Shakman, supra, 481 F. Supp. at 1356-59. See Wzorek v. City of Chicago, 708 F. Supp. 954 (N.D. Ill. 1989). Following a hearing held on August 16, 1989 on the issue of reinstatement, the district court entered judgment in Petitioner's favor, but, due to Petitioner's severe depression caused by his unlawful discharge, concluded that Petitioner was not presently able to return to his former position. See Wzorek v. City of Chicago, 718 F. Supp. 1386 (N.D. Ill. 1989). As an equitable remedy, the court ordered the City to pay for Petitioner's psychiatric treatment for the next two years in order that Petitioner could obtain the intensive treatment necessary for him to be able to again return to work. Id. at 1388-89.

On September 15, 1989, the City appealed. On July 13, 1990,

the Seventh Circuit affirmed these orders in their entirety, with the exception of the ruling requiring the City to pay for Petitioner's psychiatric treatment, which order was reversed. See Wzorek v. City of Chicago, 906 F.2d 1180 (7th Cir. 1990).

Since October 1991, Petitioner sought reinstatement in supplemental proceedings in the district court. In the Spring of 1994, Petitioner first discovered that the transcript of the August 16, 1989 hearing which had previously been made a part of the City's appellate record was erroneous, in that the first six (6) pages of said hearing transcript had been replaced with the first six (6) pages of an earlier hearing transcript. This omission was crucial because it concealed from the appellate court material findings by the district judge which Petitioner contends would have altered the outcome of the Seventh Circuit's 1990 decision. Moreover, the second August 16, 1989 transcript which Petitioner discovered in 1994 contains an entirely different signature of the court reporter and preparation date than that contained on the transcript in the previous appellate record.

On December 19, 1994, Petitioner formally raised these serious matters to the attention of the district court and requested that the court enter findings of fact pursuant to Rule 60(b), Fed. R. Civ. P., regarding the alteration of its records. On February 27, 1995, the trial court entered judgment against Petitioner's request for reinstatement without ever addressing the merits of Petitioner's request for relief under Rule 60(b). See Appendix B.

Petitioner filed a timely appeal on October 13, 1995. On

appeal, the City admitted that the six (6) transcript pages of the August 16, 1989 hearing transcript were, in fact, omitted from the appellate record during its prior appeal. Moreover, the City, in agreement with Petitioner, stated in its brief that "the district court did not address this [the Petitioner's] claim separately under Rule 60(b)." Though Petitioner argued this issue at great length on appeal, the Seventh Circuit, like the district court, did not address the merits of this claim regarding the altered court transcripts.<sup>1</sup>

In addition, on July 23, 1992, Petitioner filed a motion to produce the court reporter's electronic sound recording tapes on the ground of discrepancies in the written transcripts as compared with the testimony actually given during the trial of Petitioner's action. On the same date, the district judge denied said motion. See Appendix C. Again, the Seventh Circuit failed to address this issue in its order. See Appendix A.

---

<sup>1</sup> As noted above, both parties to the appeal agreed that the district judge failed to address Petitioner's claim concerning fraud on the court. No mention of this issue is made in the district court's judgment ruling. See Appendix B. The remark contained in the appellate court's order to the effect that the district court dismissed Petitioner's fraud claim on the ground that it contained conclusory allegations (Appendix A at 2) was apparently incorrectly taken from the argument portion of the appellee's brief and erroneously attributed to the district court.

## REASONS FOR GRANTING THE PETITION

Supreme Court Rule 10(a) sets forth, as a reason for granting certiorari, that a United States court of appeals has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's supervisory power. The first issue presented by Petitioner unequivocally falls within this category. The second question raised by Petitioner presents a case of first impression in this Court and raises an important question of federal law that has not been, but should be, settled by this Court. See Sup. Ct. R. 10(c). Each of the legal issues presented merits review by this Honorable Court.

### I.

PETITIONER DEPRIVED OF CONSTITUTIONAL RIGHT OF ACCESS TO THE COURTS BY COURT'S REFUSAL TO ADDRESS MERITS OF PETITIONER'S PENDING RULE 60(b) MOTION ALLEGING FRAUD ON THE COURT CONCERNING ALTERATION OF OFFICIAL COURT TRANSCRIPTS.

It is beyond dispute that the right of access to the courts is a fundamental right protected by the Constitution, a right for which this Court has found several constitutional bases. See, e.g., Chambers v. Baltimore & O.R.R., 207 U.S. 142, 148 (1907)(right of access is a privilege and immunity secured under Article IV of the Constitution and the Fourteenth Amendment); California Motor Transport Co. v. Trucking Unlimited, 404 U.S. 508, 510 (1972) (right of access is one aspect of First Amendment right of petition); Wolff v. McDonnell, 418 U.S. 539, 579 (1974)(right of access is founded in the Due Process Clause). See also Hansberry v. Lee, 311 U.S. 32, 40 (1940)(right to "a day in court" is right protected

by the due process clauses of the Constitution).

More specifically, the due process clause of the Fifth Amendment limits the power of courts to dismiss an action without affording a party the opportunity for a hearing on the merits. Societe Internationale v. Rogers, 357 U.S. 197, 209 (1958). See Joint Anti-Fascist Refugee Comm. v. McGrath, 341 U.S. 123, 162, 168-69 (1951)(Frankfurter, J. concurring). Similarly, in Wolff, supra, this Court declared that "no person will be denied the opportunity to present to the judiciary allegations concerning violations of fundamental constitutional rights." Id., 418 U.S. at 579.

Herein, Petitioner raised serious allegations regarding the alteration of official court transcripts and its adverse effect upon his right to a fair hearing in the courts. In this regard, in Curro v. Watson, 884 F. Supp. 708, 719 (E.D.N.Y. 1995), the court very recently ruled that

Because effective appellate review would be substantially hampered if the trial transcript were materially in error, it stands to reason, therefore, that this substantive due process right would be meaningless unless it also embraced the right to a reasonably accurate transcript....

See Bounds v. Smith, 430 U.S. 817, 822 (1977)("'adequate and effective appellate review' is impossible without a trial transcript").

Furthermore, Petitioner has not only alleged the alteration of pivotal court transcripts, but has alleged that the alteration of said transcripts was deliberate and constituted fraud on the court under Rule 60(b). Fraud on the court occurs where a party tampers with the fair administration of justice by deceiving "the institutions set up to protect and safeguard the public" or otherwise abusing or undermining the integrity of the judicial

process. Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 246 (1944). Of course, a federal court has the inherent power to inquire into the integrity of its judgments and to vacate such judgments upon proof that a fraud has been perpetrated upon it. Chambers v. Nasco, Inc., 501 U.S. 32, 44 (1991). Said another way, "Fraud vitiates everything." United States v. Throckmorton, 98 U.S. 61, 66 (1878).

When Petitioner filed his request for relief under Rule 60(b), he forthrightly invoked the discretion of the district court. Williams v. Hatcher, 890 F.2d 993, 995 (7th Cir. 1989). However, by failing to address the merits of Petitioner's Rule 60(b) motion the court not only erred in failing to exercise its discretion, but it violated Petitioner's substantive due process rights to have his claim heard. See Monroe Div., Litton Business Systems, Inc. v. DeBari, 562 F.2d 30, 33 (10th Cir. 1977)(party denied constitutional right to due process by trial court's refusal to allow hearing on party's claim for damages from wrongful injunction).

Finally, this Court has written that "[t]he touchstone of due process is protection of the individual against arbitrary action of government." Wolff, supra, 418 U.S. at 558. Petitioner filed a timely request for an investigation under Rule 60(b), which motion clearly alleged a substantive due process violation concerning the alteration of transcripts. See Bremiller v. Cleveland Psychiatric Institute, 879 F. Supp. 782, 792 (N.D. Ohio 1995)(complaint stated substantive due process claim where plaintiff alleged defendants destroyed documents relevant to her claims). Accordingly, at a minimum, the appellate court was required to



reverse and remand Petitioner's case with instructions that the district court make a ruling on Petitioner's Rule 60(b) motion, or, in the alternative, that the trial court determine the prejudice arising from the lack of an accurate transcript. See United States v. Antoine, 906 F.2d 1379, 1381 (9th Cir.), cert. denied, 498 U.S. 963 (1990)(case remanded to district court to determine prejudice from lack of complete transcript).

In sum, the fact that Petitioner's substantive due process rights were previously violated as the result of the alteration of material court transcripts is serious enough, but for both of the lower courts to then transgress Petitioner's constitutional right of access to the courts by refusing to address the merits of his Rule 60(b) motion regarding fraud on the court contravenes the very purpose for which the courts exist, viz., to provide a forum for resolving disputes and for dispensing justice. Such a result is not only constitutionally impermissible (Wolff, supra, 418 U.S. at 579), but constitutes such a departure from the accepted and usual course of judicial procedures as to call for the exercise of this Court's supervisory power in order to insure that Petitioner is, at the very least, entitled to his "day in court." See Sup. Ct. R. 10(a) and (c).

## II.

FIRST AMENDMENT GUARANTEE OF RIGHT OF ACCESS TO JUDICIAL RECORDS AND THE COURT REPORTER'S ACT (28 U.S.C. 753(b)) ENTITLE PETITIONER TO HEAR COURT REPORTER'S ELECTRONIC SOUND RECORDING TAPES OF PETITIONER'S TRIAL IN ORDER TO RESOLVE DISCREPANCIES IN WRITTEN TRANSCRIPTS.

The public's right of access to judicial records and documents is well-established. Nixon v. Warner Communications, Inc., 435 U.S. 589, 597 (1978). Such right stems from the federal common law, as well as from the First Amendment. Grove Fresh Distributors, Inc. v. Everfresh Juice Co., 24 F.3d 893, 897 (7th Cir. 1994). This right of access applies to civil as well as criminal proceedings. Id. Moreover, there is a strong presumption in favor of public access, Smith v. U.S. Dist. Court, 956 F.2d 647, 650 (7th Cir. 1992), which presumption is "especially heavy" once an open hearing has been held. United States v. Mitchell, 551 F.2d 1252, 1261 n.39 (D.C. Cir. 1976), rev'd on other grounds sub nom. Nixon v. Warner Communications, Inc., 435 U.S. 589 (1978).

In this regard, "judicial records" encompass documentary, as well as non-documentary, materials, including transcripts, evidence, pleadings, everything in the record, audio tapes and video tapes. Smith, supra, 956 F.2d at 650. Judicial records likewise include non-documentary items which were not admitted into evidence. In re Application of CBS, Inc., 540 F. Supp. 769, 771 n.3 (N.D. Ill. 1982) ("Nor is the Court persuaded that the [audio] tapes sought are not 'judicial records' because they were not technically admitted into evidence"). Moreover, in context of the First Amendment, the right of access to the audio tapes at

issue is further highlighted by this Court's holding that free speech carries with it the "freedom to listen." Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, 576 (1980).

Herein, the district court denied Petitioner the right of access to the audio tapes of the civil trial in his case on two grounds. First of all, the trial judge held that if Petitioner was given access to such tapes,

then everybody in the world could get them, and we would be playing them every night on Channel 7, Channel 5, on Channel 2, and Channel 9, and Channel 6 and Channel 32 whenever they wanted them. (Appendix C at 3)

However, it has repeatedly been held that a court may not deny a party access on the basis of unsupported hypothesis or conjecture. United States v. Edwards, 672 F.2d 1289, 1294 (7th Cir. 1982). In addition, in United States v. Guzzino, 766 F.2d 302, 304 (7th Cir. 1985), the Seventh Circuit specifically ruled that it was an abuse of discretion for a court to deny a party access to audio tapes on the basis of what the news media might do with them. See also Richmond Newspapers, Inc., *supra*, 448 U.S. at 573 (where court praises media for contributing to public understanding and comprehension of justice system).

Secondly, the district judge denied Petitioner access to his trial tapes on the ground that such tapes were the court reporter's "personal property, they are used as a tool just like a pencil, and I'm not going to make her give you her pencils." (Appendix C at 3-4) However, contrary to the trial court's characterization, this Court has declared that "[w]hat transpires in the court room is public property." Craig v. Harney, 331 U.S. 367, 374 (1947). Moreover, access to such "electronic sound

recording[s]" is statutorily provided for in the Court Reporter's Act, viz., 28 U.S.C. 753(b). In Mitchell, supra, the court described this Act as granting one the "right to inspect court stenographer's notes or mechanical recordings as well as the transcript." Id., 551 F.2d at 1258 n.21.

In addition, the audio tapes at issue herein were sought in an effort to check the accuracy of the written trial transcripts, which the Petitioner contended were not representative of all of the testimony and statements made at the trial. This is just the type of situation in which access to judicial records should be granted without hesitation. CBS, Inc. v. U.S. Dist. Court, 765 F.2d 823, 826 (9th Cir. 1985)("If the right of access is to be meaningful, a court has the duty to insure that its records are accurate").

Accordingly, since this issue bears directly upon the very integrity of the court's own records, and therefore presents an important federal question which has not been, but should be, decided by this Court, the instant Petition should be granted. See Sup. Ct. R. 10(c).

### CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Eugene W. Wozniak

Date: 9/25/96

## ORIGINAL

Submitted May 9, 1996

Decided May 24, 1996

UNPUBLISHED ORDER  
NOT TO BE CITED  
PER CIRCUIT RULE 53

Hon. WALTER J. CUMMINGS, Circuit Judge

Hon. FRANK H. EASTERBROOK, Circuit Judge

Hon. KENNETH F. RIPPLE, Circuit Judge

EUGENE WZOREK.

*Petitioner-Appellant,*

No. 95-3470

vs.

CITY OF CHICAGO, an Illinois  
Municipal Corporation

*Respondent-Appellee.*

Appeal from the United States  
District Court for the Northern  
District of Illinois, Eastern  
Division.

No. 84 C 9978

Brian Barnett Duff, *Judge.*

On June 29, 1984, Petitioner Wzorek was discharged from his position as a motor truck driver in the City of Chicago's Department of Sewers. On August 16, 1989, a district court issued an opinion and order entering judgment in favor of Wzorek, concluding that his discharge violated the consent decree entered in *Shakman v. Democratic Org. of Cook County*, 481 F. Supp. 1315, 1356-1359 (N.D. Ill. 1979). The district court awarded Wzorek back pay for the violation, but denied his request for reinstatement because he was severely depressed and was taking medications that rendered him unfit to drive a truck. *Wzorek v. City of Chicago*, 718 F. Supp. 1180, 1187 (N.D. Ill. 1989). In lieu of reinstatement, the court awarded Wzorek "front pay" in an amount of one year's salary. This Court affirmed that opinion in all respects except one, which is unimportant for purposes of this appeal. See

## 000228

*Wzorek v. City of Chicago*, 906 F.2d 1180 (7th Cir. 1990).

On December 19, 1994, Wzorek filed a Petition for Rule to Show Cause with the district court. In the Petition, Wzorek essentially alleged that the City of Chicago continued to violate the *Shakman* decree by failing to either reinstate him to his former position or pay him compensation for "the remainder of his life." On March 13, 1995, he filed a Motion to Alter or Amend Judgment pursuant to Fed. R. Civ. P. 52(b) and 59(e). The district court denied Wzorek's Petition, as well as his Motion to Alter or Amend Judgment.

Typically, a plaintiff's salary-related compensation for an unlawful discharge involves two elements: Back pay, representing compensation for past suffering; and reinstatement, to avoid future suffering. See *International Union of Operating Eng'rs, Local No. 841 v. Murphy Co.*, \_\_\_ F.3d \_\_\_, \_\_\_, No. 95-2608, 1996 WL 209909, at\*4. Wzorek was awarded back pay, but because he was incapable of returning to work, reinstatement was not a viable option. Instead, the district court awarded Wzorek "front pay" in the amount of one year's salary. This award was not in lieu of one year's worth of reinstatement, to be renewed annually for "the remainder of his life," as Wzorek suggests. Rather, it was in lieu of reinstatement as a whole. Together, the award of both front and back pay represented Wzorek's complete relief for the unlawful discharge. The City of Chicago paid the 1990 judgment in full, thereupon extinguishing its liability and closing the book on Wzorek's case. Wzorek's Petition for Rule to Show Cause was properly dismissed.

Wzorek's Petition also contained a section labeled "Fraud on the Court." In this section, Wzorek alleged that in the prior appeal in this case, the transcript of one of the hearings incorrectly contained six pages from another hearing on a different date. It then alleged that unknown City agents had entered the federal courthouse to remove the correct pages and substitute them with the incorrect ones. The district court dismissed this claim of fraud on the basis that it consisted of only conclusory allegations that were inadequate to sustain a claim that the 1990 judgment should be vacated. Wzorek has not demonstrated that this determination was in error.

The district court's dismissal of Wzorek's Petition for Rule to Show Cause and his Motion to Alter or Amend Judgment are AFFIRMED.

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UNITED STATES

REPORTS

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**519**

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OCT. TERM 1996

AMENDMENTS OF RULES

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# UNITED STATES REPORTS

VOLUME 519

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CASES ADJUDGED

IN

# THE SUPREME COURT

AT

OCTOBER TERM, 1996

BEGINNING OF TERM

OCTOBER 7, 1996, THROUGH FEBRUARY 26, 1997

TOGETHER WITH OPINION OF INDIVIDUAL JUSTICE IN CHAMBERS

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FRANK D. WAGNER

REPORTER OF DECISIONS

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WASHINGTON : 1999

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**000231**

#### ERRATUM

516 U.S. 1101, line 7: "63 Ohio St. 3d 1418" should be "63 Ohio St. 3d 1419".

**JUSTICES**  
**OF THE**  
**SUPREME COURT**

DURING THE TIME OF THESE REPORTS

---

WILLIAM H. REHNQUIST, CHIEF JUSTICE.  
JOHN PAUL STEVENS, ASSOCIATE JUSTICE.  
SANDRA DAY O'CONNOR, ASSOCIATE JUSTICE.  
ANTONIN SCALIA, ASSOCIATE JUSTICE.  
ANTHONY M. KENNEDY, ASSOCIATE JUSTICE.  
DAVID H. SOUTER, ASSOCIATE JUSTICE.  
CLARENCE THOMAS, ASSOCIATE JUSTICE.  
RUTH BADER GINSBURG, ASSOCIATE JUSTICE.  
STEPHEN BREYER, ASSOCIATE JUSTICE.

RETIRED

LEWIS F. POWELL, JR., ASSOCIATE JUSTICE.  
WILLIAM J. BRENNAN, JR., ASSOCIATE JUSTICE.  
BYRON R. WHITE, ASSOCIATE JUSTICE.  
HARRY A. BLACKMUN, ASSOCIATE JUSTICE.

---

OFFICERS OF THE COURT

JANET RENO, ATTORNEY GENERAL.  
WALTER DELLINGER, ACTING SOLICITOR GENERAL.\*  
WILLIAM K. SUTER, CLERK.  
FRANK D. WAGNER, REPORTER OF DECISIONS.  
DALE E. BOSLEY, MARSHAL.  
SHELLEY L. DOWLING, LIBRARIAN.

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\*Acting Solicitor General Dellinger was presented to the Court on October 7, 1996. See *post*, p. v.

## SUPREME COURT OF THE UNITED STATES

### ALLOTMENT OF JUSTICES

*It is ordered* that the following allotment be made of the Chief Justice and Associate Justices of this Court among the circuits, pursuant to Title 28, United States Code, Section 42, and that such allotment be entered of record, effective September 30, 1994, viz.:

For the District of Columbia Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the First Circuit, DAVID H. SOUTER, Associate Justice.

For the Second Circuit, RUTH BADER GINSBURG, Associate Justice.

For the Third Circuit, DAVID H. SOUTER, Associate Justice.

For the Fourth Circuit, WILLIAM H. REHNQUIST, Chief Justice.

For the Fifth Circuit, ANTONIN SCALIA, Associate Justice.

For the Sixth Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Seventh Circuit, JOHN PAUL STEVENS, Associate Justice.

For the Eighth Circuit, CLARENCE THOMAS, Associate Justice.

For the Ninth Circuit, SANDRA DAY O'CONNOR, Associate Justice.

For the Tenth Circuit, STEPHEN BREYER, Associate Justice.

For the Eleventh Circuit, ANTHONY M. KENNEDY, Associate Justice.

For the Federal Circuit, WILLIAM H. REHNQUIST, Chief Justice.

September 30, 1994.

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(For next previous allotment, and modifications, see 502 U. S., p. VI, 509 U. S., p. v, and 512 U. S., p. v.)

PRESENTATION OF THE ACTING  
SOLICITOR GENERAL

SUPREME COURT OF THE UNITED STATES

MONDAY, OCTOBER 7, 1996

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Present: CHIEF JUSTICE REHNQUIST, JUSTICE STEVENS,  
JUSTICE O'CONNOR, JUSTICE SCALIA, JUSTICE KENNEDY,  
JUSTICE SOUTER, JUSTICE THOMAS, JUSTICE GINSBURG, and  
JUSTICE BREYER.

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THE CHIEF JUSTICE said:

The Court now recognizes the Attorney General, Janet  
Reno.

The Attorney General said:

MR. CHIEF JUSTICE, and may it please the Court. I have  
the honor to present to the Court the Acting Solicitor Gen-  
eral, Walter Dellinger of North Carolina.

THE CHIEF JUSTICE said:

Thank you, General Reno.

Mr. Solicitor General, the Court welcomes you to the per-  
formance of the important office that you have assumed, to  
represent the government of the United States before this  
Court. We wish you well in your new office.

## TABLE OF CASES REPORTED

NOTE: All undesignated references herein to the United States Code are to the 1994 edition.

Cases reported before page 801 are those decided with opinions of the Court or decisions *per curiam*. Cases reported on page 801 *et seq.* are those in which orders were entered. The opinion reported on page 1301 *et seq.* is that written in chambers by an individual Justice.

|   | Page         |
|---|--------------|
| Aaron; Brown Group, Inc. <i>v.</i> . . . . .                                    | 950          |
| Aaron; Brown Shoe Co. <i>v.</i> . . . . .                                       | 950          |
| Aaron <i>v.</i> Cunningham . . . . .  | 1031,1143    |
| Abandy <i>v.</i> United States . . . . .  | 876          |
| Abate <i>v.</i> Walton . . . . .  | 1026         |
| Abbott <i>v.</i> Pipefitters Local Union No. 522 Benefit Plan . . . . .         | 1111         |
| ABB Vetco Gray, Inc.; Hines <i>v.</i> . . . . .                                 | 1077         |
| Abdallah <i>v.</i> United Savings Bank . . . . .                                | 1081         |
| Abdelsayed; Narumanchi <i>v.</i> . . . . .                                      | 868          |
| Abdullah <i>v.</i> Milonas . . . . .  | 840          |
| Abdullah <i>v.</i> United States . . . . .                                      | 1132         |
| Abebe-Jiri; Negewo <i>v.</i> . . . . .  | 830          |
| Abel; Giffler <i>v.</i> . . . . .   | 868          |
| Abele Assoc. <i>v.</i> Allegheny Cty. Bd. of Prop. Assess., App. & Rev. . . . . | 868          |
| Abidekun <i>v.</i> Commissioner of Social Services of New York City . . . . .   | 891          |
| Abidekun <i>v.</i> Coombe . . . . .   | 912          |
| Abou-Kassem <i>v.</i> United States . . . . .                                   | 818          |
| Abraham; Selby <i>v.</i> . . . . .  | 1032         |
| Abraham <i>v.</i> Young . . . . .   | 944          |
| Abrahams <i>v.</i> Young & Rubicam Inc. . . . .                                 | 816          |
| Abrams <i>v.</i> Johnson . . . . .  | 925,947,1038 |
| Acevedo; Huss <i>v.</i> . . . . .   | 1153         |
| Acevedo Gutierrez <i>v.</i> United States . . . . .                             | 974          |
| Achilles Corp. <i>v.</i> Kaepa, Inc. . . . .                                    | 821          |
| Acker; Jefferson County <i>v.</i> . . . . .                                     | 1106         |
| Acklen <i>v.</i> United States . . . . .  | 1142         |
| Acosta; Yawczak <i>v.</i> . . . . .   | 1009         |
| Acosta Coronado <i>v.</i> United States . . . . .                               | 900          |
| ACS Construction Co. of Miss.; Parkson Corp. <i>v.</i> . . . . .                | 931          |

## TABLE OF CASES REPORTED

CLXIX

|  | Page              |
|--|-------------------|
| Wuornos <i>v.</i> Florida . . . . .                              | 968,997           |
| Wutthidetgrainggrai <i>v.</i> United States . . . . .            | 1017              |
| W. W. Henry Co.; Guilbeau <i>v.</i> . . . . .                    | 1091              |
| Wyatt; Haas <i>v.</i> . . . . .                                  | 824               |
| Wyatt <i>v.</i> United States . . . . .                          | 1060              |
| Wynne <i>v.</i> Wynne . . . . .                                  | 1124              |
| Wyoming; Nebraska <i>v.</i> . . . . .                            | 1038              |
| Wyoming; Rissler & McMurry Co. <i>v.</i> . . . . .               | 1091              |
| Wyoming; Sanchez <i>v.</i> . . . . .                             | 984               |
| Wyshak <i>v.</i> American Savings Bank, F. A. . . . .            | 866,950,1023,1035 |
| Wzorek <i>v.</i> Chicago . . . . .                               | 1067              |
| Yahweh <i>v.</i> United States . . . . .                         | 866               |
| Yang <i>v.</i> Immigration and Naturalization Service . . . . .  | 824               |
| Yang; Immigration and Naturalization Service <i>v.</i> . . . . . | 26,1085           |
| Yarber; Illinois <i>v.</i> . . . . .                             | 1150              |
| Yawczak <i>v.</i> Acosta . . . . .                               | 1009              |
| Yepez <i>v.</i> United States . . . . .                          | 1078              |
| Yett <i>v.</i> United States . . . . .                           | 1141              |
| Yil Jo <i>v.</i> United States . . . . .                         | 1137              |
| Yin <i>v.</i> California . . . . .                               | 1114              |
| Yohn <i>v.</i> Board of Regents, Univ. of Mich. . . . .          | 1010              |
| York <i>v.</i> Arkansas . . . . .                                | 1152              |
| York <i>v.</i> New York . . . . .                                | 1065              |
| Young, <i>In re</i> . . . . .                                    | 1076              |
| Young; Abraham <i>v.</i> . . . . .                               | 944               |
| Young; Brown <i>v.</i> . . . . .                                 | 845               |
| Young; El Jabaar <i>v.</i> . . . . .                             | 833               |
| Young <i>v.</i> Fordice . . . . .                                | 991,1027,1039     |
| Young; Freeman . . . . .   | 1121              |
| Young <i>v.</i> Jones . . . . .                                  | 855               |
| Young <i>v.</i> Lowe . . . . .                                   | 942               |
| Young <i>v.</i> Shalala . . . . .                                | 1124              |
| Young; Tobias <i>v.</i> . . . . .                                | 952               |
| Young <i>v.</i> United States . . . . .                          | 851,855,1135      |
| YoungBear, <i>In re</i> . . . . .                                | 1107              |
| Young & Rubicam Inc.; Abrahams <i>v.</i> . . . . .               | 816               |
| Youngstown; Urichich <i>v.</i> . . . . .                         | 928,1101          |
| Young Yil Jo <i>v.</i> United States . . . . .                   | 1137              |
| Younis Bros. & Co. <i>v.</i> CIGNA Worldwide Ins. Co. . . . .    | 1077              |
| Yount <i>v.</i> Love . . . . .                                   | 1130              |
| Youpee; Babbitt <i>v.</i> . . . . .                              | 234               |
| Yourman; Guiliani <i>v.</i> . . . . .                            | 1145              |
| Ysassi <i>v.</i> United States . . . . .                         | 1066              |
| Yuan Jin <i>v.</i> Temple Univ. . . . .                          | 1013,1102         |

ORDERS

1067

519 U. S.

January 6, 1997

No. 96-6766. *MARTIN v. UNITED STATES*. C. A. 4th Cir. Certiorari denied. Reported below: 94 F. 3d 642.

No. 96-6768. *LEE v. NUTH, WARDEN, ET AL.* C. A. 4th Cir. Certiorari denied. Reported below: 97 F. 3d 1448.

No. 96-6770. *ORDONOZ v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 94 F. 3d 654.

No. 96-6781. *TEAGUE v. UNITED STATES*. C. A. 2d Cir. Certiorari denied. Reported below: 93 F. 3d 81.

No. 96-6783. *THOMPSON v. JOHNSON, DIRECTOR, TEXAS DEPARTMENT OF CRIMINAL JUSTICE, INSTITUTIONAL DIVISION*. C. A. 5th Cir. Certiorari denied.

No. 96-6784. *HOCKENBERRY v. DETELLA, WARDEN*. C. A. 7th Cir. Certiorari denied. Reported below: 101 F. 3d 110.

No. 96-6790. *POLLACK v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 92 F. 3d 1174.

No. 96-6792. *FREDERICK v. GROOSE, SUPERINTENDENT, JEFFERSON CITY CORRECTIONAL CENTER, ET AL.* C. A. 8th Cir. Certiorari denied.

No. 96-6797. *BRONSON v. WALKER ET AL.* C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1431.

No. 96-6798. *ELICH v. UNITED STATES*. C. A. 3d Cir. Certiorari denied. Reported below: 96 F. 3d 1435.

No. 96-6800. *MURILLO v. UNITED STATES*. C. A. 6th Cir. Certiorari denied. Reported below: 99 F. 3d 1140.

No. 96-6801. *OGBEIDE v. UNITED STATES*. C. A. 5th Cir. Certiorari denied. Reported below: 96 F. 3d 1441.

No. 96-6802. *VELEZ v. PUERTO RICO*. Cir. Ct. App. P. R. Certiorari denied.

No. 96-6803. *WZOREK v. CITY OF CHICAGO*. C. A. 7th Cir. Certiorari denied. Reported below: 86 F. 3d 1158.

No. 96-6805. *GILL v. UNITED STATES*. C. A. 9th Cir. Certiorari denied. Reported below: 95 F. 3d 1159.

No. 96-6807. *KELLY v. UNITED STATES*; and